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POLITICAL SCIENCE QUARTERLY

THE POLITICAL THEORIES OF JEAN JACQUES ROUSSEAU

I. *Source and Method of his Philosophy*

THE contributions of Jean Jacques Rousseau to political theory can be rightly understood only through a pretty clear idea of the man himself. He was no statesman, no scholar, no philosopher; and he gloried in the fact.[1] Though he claimed to be a man, he never developed morally beyond the stature of a spoiled child. He was, however, a child of genius. His mind was inordinately sensitive to certain types of impression, and his faculty for literary expression was remarkable. Upon any subject that engaged his errant and erratic fancy, he could concentrate a fervid and captivating eloquence, a wealth of seductive speculation and a plausible imitation of logical force. Certain problems of social and political life early attracted Rousseau's attention. Essays upon these topics revealed the vigor and grace of his style, and struck the dominant chord of public feeling. In 1750 he came suddenly to fame by an essay maintaining that the progress of the sciences and arts had tended to degrade the morals of men.[2] Four years later he further developed this general thesis in the famous *Discourse*

[1] "Lecteurs, souvenez-vous toujours que celui qui vous parle n'est ni un savant, ni un philosophe; mais un homme simple, ami de la vérité, sans parti, sans système, un solitaire, qui vivant peu avec les hommes a moins d'occasions de s'imboire de leurs préjugés . . ." Émile, liv. ii.

[2] This essay took the prize in a competition set by the Academy of Dijon on the subject: "Si les progrès des sciences et des arts a contribué à corrompre ou à épurer les moeurs." Dreyfus-Brissac, Du Contrat social, p. iv.

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on the Origin and Basis of Inequality among Men. From this time political and social themes formed the staple of his thinking till the culmination of his work in the *Social Contract* and the *Emile*, published in 1762.

It is rare in the history of political philosophy that the source of influential theory can be so precisely traced to individual personality as in the case of Rousseau. He was of a sensitive, emotional, self-conscious temperament, impatient of control, even of self-control, and resentful toward every institution or convention that suggested restriction or regularity. Of agreeable social relations with rational and cultivated men he was wholly incapable. Efforts of many such men, admirers of his genius and his theories, to establish and maintain cordial relations with Rousseau ended uniformly in failure, with a great access of bitterness and rancor on his part toward things in general. Only one human being seems to have possessed the power to induce more than a feeble flicker of the rudimentary social instinct in Rousseau, and this was the coarse and unlovely woman with whom for a third of a century he lived in squalid and irregular domestic relations.[1] Practically destitute of the qualities that make human society possible, his instinct was to disparage the conspicuous features of social life. His own incapacity for orderly and useful commerce with his kind he generalized into a characteristic of the race; and the protest of his vain and sensitive spirit against the restraints of law and custom became in his writings the universal truth of human freedom. He was himself the free and noble savage whom he pictured so pleasingly in his works. The *Confessions*, in which he presents himself with deliberate frankness, contain scarcely more of his intellectual autobiography than can be found in his *Discourses* and other political writings.

Such a temperament as Rousseau's could in no age and no place have found a more stimulating environment than the middle eighteenth century in France. The smouldering fire of protest that determined his restless and unhappy private life became a devouring flame when he attained publicity and

[1] Morley, Rousseau, vol. i, chap. iv.

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turned his attention to the religion, morals, manners and politics of his day. Society on the continent, and more than elsewhere, perhaps, in France, abounded in conditions that were in the highest degree odious to thoughtful men. Feudal class distinctions, mediæval theology and divine-right monarchy were salient facts of the situation. The nobility still retained their privileges, though the justification for these had long disappeared with the loss of real political power; the clergy also retained their privileges, though their usefulness was waning through dissoluteness and dissensions within and skepticism without their circle. Louis XV, as an embodiment of God-given absolute power, was contributing all that his sodden and lustful nature could to destroy the sense of duty and respect on which the whole fabric of the monarchic system rested.

The reaction of rational philosophy against obscurantism and despotism was well under way when Rousseau appeared on the scene. Voltaire and Montesquieu had, in their widely different methods, roused the spirit of revolt. Diderot was just planning that *Encyclopædia* which in the scope and disconnectedness of its contents so well typified the genius of its projector, and in its reputation and fate so well expressed the antagonism between the established political system and the aspirations of current philosophy. Rousseau wrote his earliest political essays with the sympathetic co-operation of Diderot. Before the *Social Contract* appeared, however, the two men were wide asunder personally, and Rousseau had taken a course in his political speculation that put him far outside the Encyclopædist group. It was not in his nature to react mildly against a situation that galled him—as most facts of actual life did. He knew not how to stop short of the uttermost limit of protest. Liberal philosophers in Germany and France itself had for half a century waged vigorous war upon the oppressive and deadening principles and practices of the old régime.[1] The goal of their demands was, however, merely a tolerant and enlightened despotism. Even those who, like Montesquieu, conceived that salvation was to be found in the English system, looked for only

[1] Dunning, Political Theories from Luther to Montesquieu, pp. 373, 392.

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some beneficent re-arrangement of the organs of government. Rousseau, when he set about projecting political reform, never paused till he had provided for the total remodeling of government, state and society itself.

But the radical character of Rousseau's social and political theories was not due to any novelty in the ideas out of which they were made. He lighted up and magnified, but he did not create. Old and well-known concepts were played upon by his brilliant fancy till they were transfigured and made to appeal to men with an uncanny attractiveness. After the great success of his *Discourse on the Progress of the Sciences and Arts* he resolved to write a systematic work covering the whole field of political science. The *Social Contract* is a fragment of this work —the only part of it that ever took shape. In preparing for this enterprise, Rousseau familiarized himself with some of the chief writers on political philosophy. Pufendorf, Locke and Montesquieu found especial favor in his eyes, and their ideas were freely appropriated with and without acknowledgment. Grotius and Hobbes excited his wrath; protesting against the tendency of critics to praise Grotius while execrating Hobbes, Rousseau included both in the same condemnation. "The truth is," he said, "that their principles are exactly alike, distinguishable only in expression. They differ also in method, Hobbes supports himself on sophisms, Grotius on poets; in all else they are on common ground." [1]

Besides the influence of his rather superficial study of earlier philosophers, Rousseau's thought showed plainly the influence of his birthplace. It was with real pride that he described himself on the title-page of the *Social Contract* as a "citizen of Geneva." The Swiss city-state furnished him with many suggestions of a system in marked contrast to that which prevailed in France, and clearly strengthened his predilection for popular government. Even more important was the stimulus it gave to that unbounded admiration with which he, in common with all his contemporaries, regarded the Greek and Roman republics. He had no deep or scholarly acquaintance with the history of

[1] Émile, liv. v.

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the ancient city-states, but he was full of the literary tradition that clothed their institutions with the perfection of wisdom and their heroes with the perfection of virtue. Not Machiavelli nor Montesquieu was more satisfied than he to clinch a demonstration with a reference to these overworked commonwealths. Rousseau's nimble logic could use them to prove a rule either by their conformity to it or by their deviation from it. Thus, he maintained that every state is bound to die; for "if Sparta and Rome have perished, what state can hope to endure forever?"[1] On the other hand, his contention that a system of public education was an essential feature of every good state was confronted by the fact that Rome knew nothing of it. That, he explained, signified nothing; since "Rome was for five centuries a continuous miracle, such as the world must never hope to see again."[2]

It was at times an amiable delusion of Rousseau's that his philosophy was fundamentally a series of inductions from the observation of ordinarily neglected facts.[3] In some measure this was true of his ideas about education, as expressed in the *Emile;* it was wholly untrue of his theoretical politics, in the *Discourse on Inequality* and the *Social Contract.* After his reputation was made, he was applied to for suggestions on the very concrete political situation in two troubled lands, Corsica and Poland. His responses embodied many shrewd and striking comments on the actual facts involved.[4] But more important here were the persistency and adroitness with which he applied, at whatever effort of twisting and straining, the dogmas of his earlier speculation; and these were no inductions from his own observation of facts or reading of history, but merely the product of judicious selection among the accumulated doctrines and traditions of *a priori* political science.

[1] Contrat social, vol. iii, xi.

[2] "Économie Politique," in Œuvres (1782), vol. i, p. 391.

[3] "Mes raisonnements sont moins fondés sur les principes que sur des faits." Émile, liv. ii ". . . je donne le moins qu'il est possible au raisonnement, et ne me fie qu' à l'observation." *Ibid.*, liv. iv.

[4] For his Corsican thoughts see Morley, Rousseau, vol. ii, pp. 99 *et seq.* and references. On Poland see his "Considérations sur le gouvernement de Pologne," in Œuvres (1782), vol. i, p. 417.

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II. *Nature and Society*

Rousseau approached political theory by the well-worn pathway of the "state of nature." As to what precisely this term signified, he was not clear and consistent. He used it in practically all the various senses that had been attached to it in its long and notable career. Throughout the fluctuations of his usage, one idea alone appeared unmistakable, namely, that the natural state of man was vastly preferable to the social or civil state, and must furnish the norm by which to test and correct it.

In the *Discourse on Inequality* the natural man appears first as the solitary savage, living the happy, care-free life of the brute, without fixed abode, without articulate speech, with no needs or desires that cannot be satisfied through the merest instinct. Rousseau's handling of this conception compares favorably with that of the best among the long line of literary artists who have used it. More apparent than in most of them, however, are his admiration and sympathy for the savage. The steps by which men emerge from their primitive state are depicted with fascinating art, but the author's regret at their success pervades the picture. In the natural man are to be found the elements of perfect happiness. He is independent, contented, self-sufficing. For others of his own species he has no need, and he regards them with the same indifference that he feels toward other animals. Save for the casual and momentary union that perpetuates the race, nothing draws him to commerce with his kind. He is not, however, the timid, cowering creature that Montesquieu described, fearful of every force around him. Nor on the other hand is he the energetic, aggressive monster of Hobbes, ceaselessly driven by his passions to war upon his fellows. Only through society does man become unbalanced by either fear or ambition; the "simple, regular (*uniforme*) and solitary" life of nature involves none of the evils of either.

The natural state, as thus conceived, is a state of substantial equality. No baneful distinction is to be seen among the individuals who pursue in isolation the placid routine of satisfying their physical needs. But the deadly seeds of a different order

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are ready to germinate. With no necessary ground for it in his description of the savage state, Rousseau assumes that the human race becomes increasingly numerous; divergencies of soil, climate and season then cause differences in manner of life among men. On the shores of the seas and the rivers they catch fish and invent the hook and line. In the forests they become hunters and invent the bow and arrow. Fire is discovered by some accident, and the fortunate discoverers develop its utilities. Stone and then metal tools are made. Economic progress moves apace, and rude huts instead of casual caves become places of abode. With the appearance of fixed homes, family and property are at hand, and the knell of human equality is sounded. Social organization has begun. Intercourse of individuals and families becomes common and through it the ideas of competition and preference are developed. Evils follow in their train, but this primitive society is not, to Rousseau, an intolerable state. Looked upon as a mean between the indolence of the savage state and the too intense activity of the later phase, it appears to him the happiest period in the life of humanity—"the least subject to revolutions, the best for man."

It is quite characteristic of Rousseau that while he is describing the savage state he is disposed to consider it as the happiest and best, and when he has moved on to the tribal and early social state, this in turn appeals to him as preferable. We shall see that in time he has kind words for even fully developed society, which in the *Discourse* is the summation of evil.

Man's emergence from the primitive social condition must have been due, Rousseau says, to some fatal chance. His exposition of the process reveals a number of catastrophies that contributed to the sad result. The arts of agriculture and metallurgy were discovered; and in the application of them men had need of one another's aid. Coöperation revealed and emphasized the diversity of men's talents and prepared thus the inevitable result. The stronger man did the greater amount of work; the craftier got more of the product. Thus appeared the difference of rich and poor—the prolific source of all the other forms of inequality. Property was doing its disastrous work. The climax came with the diabolical device of property in land.

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"The first man who, after enclosing a piece of ground, bethought himself to say 'this is mine,' and found people simple enough to believe him, was the real founder of civil society." [1]

War, murder, wretchedness and horror without end followed this fatal proceeding. Rich and poor were ranged against each other in unrelenting hostility. Evils that had been unknown in the savage state, and but slightly manifested in primitive society, became now universal. To escape them, or at least to enable men to endure them, civil society was instituted. This was no recurrence to the natural order. It was, on the contrary, an enormous stride away from nature, and the introduction of still another mode of inequality among men. Its inevitable consequence was the final stage of inequality, the condition of master and slave.

Such was, in general outline, Rousseau's thought in the *Discourse on Inequality*. With proper allowance for the incoherence and inconsistencies of the work, it may be said that his state of nature is on the whole a historical rather than a psychological concept. Yet Rousseau, like Locke, who is strongly suggested by many points in the *Discourse*, refrains from insisting on the objective reality of the conditions he describes. The state he is considering is one, he says, "which no longer exists, which perhaps has not existed and which probably never will exist, but which must be accurately understood in order to get just notions as to contemporary society." [2] This view of his task would indicate that he, like Hobbes and Locke, was concerned merely with formulating the abstract qualities of human nature. But Rousseau's poetic faculty was too active and its pictures too vivid to leave room for the impression that his natural man was an abstraction or his state of nature a mere fancy. To one who does not read the warning of the preface, the *Discourse* can be nothing but an eloquent and moving narrative of the actual descent of man from natural peace and blessedness to social servitude and woe.

Psychological analysis is not wholly wanting in the *Discourse*. Rousseau employs it, *suo more*, with little pretence to consist-

[1] Discours sur l'inégalité, pt. ii, beginning.

[2] *Ibid.*, preface.

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ency, but sometimes with rather striking effect. He takes pains to repudiate at the outset the idea that man's life in the state of nature is regulated by reason. The truly natural man, *i. e.*, the savage, acts on two principles that are anterior to reason, namely, the feeling of interest in his own welfare and preservation, and the feeling of repugnance toward the sight of death or suffering in any animate creature, especially a human being. These emotions rather than reason, determine the conduct of men throughout the various phases of the natural state and give way to reason only when degeneration has gone so far that civil society must be constituted. All the rules of natural right and natural law flow directly and exclusively from the operation of these primary sentiments—self-interest and pity.[1]

This curious theory, whatever other sources it had, was an obvious generalization of certain conspicuous traits of Rousseau's own character. He was extremely selfish and extremely sensitive to suffering in others—qualities that are notoriously quite compatible with each other. One immediate application of his theory was in refuting the dogma of Hobbes that the state of nature was a state of war. The innate repugnance to suffering in his kind would necessarily operate to limit the brutality of man to man.

It is in the *Emile* that Rousseau most elaborately develops his conception of the state of nature and the natural man as a philosophic ideal rather than a historical reality. The general theme of the work is the rearing and training of a child, and the unceasing exhortation of the author is to abandon methods that have their origin or justification in the real or fancied needs of social life. "Back to nature" is his cry. This does not mean that society must be destroyed and the savage state resumed. It means merely that nature must be the rule for men in society. The incoherence of Rousseau's definitions and explanations and rhapsodies about this matter is in his most characteristic style; and seeking to comprehend clearly his conception of "nature" is like trying to visualize the fauna of the Apocalypse.[2]

[1] Discours, preface.

[2] *E. g.*, Rev. iv, 6–8; ix, 7–10.

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His purpose is in a general way intelligible; it is to strip the human mind of all the attributes that are in origin or manifestation ascribable to social life. The residue is the mental equipment of the natural man. At birth the human being is, through his senses, susceptible to impressions from without. Toward the objects that create the impressions he has a feeling of attraction or repulsion according as they are agreeable or disagreeable, and, as his mind develops, according to the rational judgment he forms about their effect upon his happiness. But meanwhile he develops and falls under the constraint of habits and opinions, and through these his dispositions toward things are modified. "Prior to that modification they constitute what I call nature in us." [1]

Such is the nearest approach to precise definition that Rousseau gives his readers. Despite its doubtful psychology it might, if adhered to, serve a useful philosophic purpose. But he does not adhere to it. One clear feature of the natural man as defined above is the use of his reason in judging his surroundings. Elsewhere Rousseau declares it characteristic of the natural man "that he be * * * subject to no government save that of his own reason." [2] With the rational faculty thus emphasized, it is discouraging to find pervading all Rousseau's philosophy, and often reiterated in set terms, the idea that reason and nature are antithetic and incompatible with each other. Reflection and its practical results he proclaims to be the pernicious product of society and its artificialities. "By nature man scarcely thinks." [3] "The man who reflects is a corrupt creature." [4] Our natural feelings (*passions*) alone give us peace and true liberty. So soon as we begin to reason and to project ourselves by induction and analogy into times and places and relations unknown to our original condition, oppression and misery crowd upon us. Thus, for example, man

[1] Émile, liv. i, *ad init.*

[2] Émile, liv. iv.

[3] "Naturellement l'homme ne pense guère." *Ibid.*, liv. v.

[4] "Si [la nature] vous a destinés à être sains, j'ose presque assurer que l'état de réflexion est un état contre nature, et que l'homme qui médite est un animal dépravé." Discours sur l'inégalité, pt. i.

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afflicts himself through unhappy foresight with the torture of anticipating death, while to unreflecting creatures it comes without distress.

In no small measure the vagaries and inconsistencies of Rousseau's views about nature and reason are due to the phrase-making instinct of the literary artist. He never thought of logic when the opportunity for a pretty turn of expression was at hand. "Forgive me my paradoxes," he wrote: "I like better to be a man of paradoxes than to be a man of prejudices."[1] Nor did he suspect that he was a man of both. The fixed and ever-present, if not always conscious, motive of his thinking was to disparage those features of social life that were distasteful to himself. The violence of his protest was as excessive in dealing with the natural man in society as it had been in dealing with the natural man prior to society; the one, like the other, became an inhuman fantasy.

In stressing the emotions and minimizing the reason as the basis of the state of nature, Rousseau dissociated his doctrine from the whole philosophical tradition on this point. Reason had been always the characteristic ingredient of the pre-social or pre-civil order. Grotius, Hobbes, Pufendorf, Locke and all their predecessors, great and small, had found man in the state of nature endowed with reason, and enabled by means of it to rise into social and political organization. Rousseau, with whatever vacillation and inconsistency, strove in general to represent reason and all philosophy as a calamitous aberration, deluding men with visions that brought them to ruin.

3. *The Social Contract*

The most pestilential reasoning and philosophy was, in Rousseau's opinion, that which sustained existing forms of political and social inequality. "Nothing can be farther from the law of nature, however we define it, than that a child give orders to an old man, an imbecile direct a sage, and a handful of people be gorged with luxuries while the starving multitude lacks the necessities of life."[2] Yet society and government, though de-

[1] Émile, liv. ii.

[2] Discours sur l'inégalité, end.

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plorable, were, he admitted, inevitable. It was necessary therefore to find some rational form through which their existence might be justified. In his *Social Contract*, Rousseau assumed the rôle of constructive philosopher and presented a theory of the state.

The precise problem that he undertakes in this work to solve is characteristically formulated in the famous phrases:

> Man is born free and everywhere he is in chains. One who believes himself the master of the rest is only more of a slave than they.[1] How does that change come about? I do not know. What can render it legitimate (*légitime*)? That question I think I can answer.[2]

That is to say, the liberty and equality that characterize the state of nature, in whatever sense the term is used, are in the civil state gone. He will justify their disappearance. And he does it, in his usual way, by proving that they are not gone at all, but subsist as fully after, as before, the institution of government. Nature and political society, liberty and authority, are absolute logical contradictories in the *Discourse* and the *Emile;* they become in the *Social Contract* inseparable and indistinguishable concepts. Such, at least, is the consequence of the theorizing in his earlier chapters. The author would not be Rousseau, however, if he did not later revert from time to time to the idea of a preëminent excellence in the non-political condition; and the typical climax of his method is to be seen in a rapturous glorification, at one point, of the political as compared with the natural state.[3]

[1] This paradox is the topic of an eloquent passage elsewhere: "... ta liberté, ton ponvoir, ne s'étendent qu' aussi loin que tes forces naturelles et pas au delà; tout le reste n'est qu' esclavage, illusion, prestige ... Jamais ton autorité réelle n'ira plus loin que tes facultés réelles. Sitôt qu'il faut voir par les yeux des autres, il faut vouloir par leurs volontés. Mes peuples sont mes sujets, dis-tu fièrement. Soit. Mais toi, qu'es-tu? Le sujet de tes ministres. Et tes ministres, à leur tour, que sont ils? les sujets de leurs commis, de leurs maitresses, les valets de leurs valets ... Vous direz toujours: Nous voulons; et vous ferez toujours ce que voudront les autres." Émile, liv. ii.

[2] Contrat social, part i.

[3] "... ses facultes s'exercent et se développement, ses idées s'étendent, ses sentiments s'ennoblissent, son âme tout entière s'élève à tel point que, si les abus de cette

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The device that he hit upon for solving the problem of his work was the social pact. Authority of man over man can have no rational basis, he holds, save agreement and consent. And there is but one species of agreement conceivable in which liberty is retained while authority is instituted. This single species is the pact through which a multitude of individuals become a collective unity—a society. Rousseau's thought here shows the very strong influence of both Hobbes and Locke. It is the latter, however, whom he follows to the end—and beyond. From the ingenious reasoning by which Hobbes made absolute monarchy a logical corollary of the social pact, Rousseau turns with strong denunciation. But the Hobbesian precision in defining the terms of the pact obviously appealed to him, and his own treatment of the subject is but the substance of Locke developed by the method of Hobbes.

The formula on which civil society rests is, according to Rousseau, this: "Each of us puts into a single mass (*met en common*) his person and all his power under the supreme direction of the general will; and we receive as a body each member as an indivisible part of the whole."[1] Through the act of a group of individuals in pronouncing, tacitly or expressly, together or in succession, this formula a moral body is constituted, with an identity, a life and a will of its own distinct from those of any of its component members. It is a public person —a body politic. From various points of view it is known as state, sovereign, power; and in the same way its members are known variously as the people, citizens, subjects.[2]

Rousseau's exposition of the spirit and effects of his contract is an amazing medley of bad logic and utter puerility. Equality, he declares, is insured, because each individual makes complete alienation of himself and all his rights to the community. That is to say, the individuals, reducing themselves to zeros, are as

nouvelle condition ne le dégradaient souvent au-dessous de celle dont il est sorti, il devrait bénir sans cesse l'instant heureux qui l'en arracha pour jamais, et qui, d'un animal, stupide et borné, fit un être intelligent et un homme." Contrat social, part i, vi.

[1] *Ibid.*, part i, vi.

[2] *Ibid.*, part i, vi.

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such equal. By the same reasoning the union is, he explains, absolutely perfect, and no individual can claim anything.[1] This would seem to mean as thorough submergence of the individual in the state as Plato ever conceived. But Rousseau finds the fullest liberty. For, he continues, "since each gives himself up to all, he gives himself up to no one;[2] and as there is acquired over every associate the same right that is given up by himself, there is gained the equivalent of what is lost, with greater power to preserve what is left."[3]

This demonstration of liberty contains as many fallacies as clauses, and finds a fitting climax in the reference to "what is left" to the individual after the pact, following repeated declarations that the individual by the pact gives up everything. It is hardly strange that controversy has continued active as to whether Rousseau stood for absolute sovereignty or for a sphere of inalienable rights in the citizen.[4] He clearly stood for both, relying upon the simple device of maintaining each of two logical contradictories.[5]

His analysis and exposition of the contract are of like fabric. By the terms of this formula the act of association is clearly conceived as merely the expression of an identical purpose by each of a group of individuals. The purpose is to recognize henceforth a social or general authority as a substitute for the varying and conflicting authorities of the individual wills. Locke and Sydney and others who set forth this same idea did not undertake to analyze it into the elements and categories of a contract in private law. Hobbes, more rigid and inexorable in his method, applied the conceptions of the jurists to the social pact, and showed who were the parties to it, what precise

[1] ". . . nul associé n'a plus rien à réclamer."—Contrat social, part i, vi.

[2] ". . . chacun se donnant à tous ne se donne à personne."—*Ibid.*

[3] ". . . et plus de force pour conserver ce qu'on a."—*Ibid.*

[4] *Cf.* POLITICAL SCIENCE QUARTERLY, vol. xxii, p. 698.

[5] James Russell Lowell never more conspicuously nodded than in declaring that Rousseau "could not fail to be a good logician. He had the fortitude to follow his logic wherever it led him." Among my Books, 1882, vol. i, page 360. Of Rousseau's fortitude there can be no doubt. But the courage of his readers often falters when his logic leads in opposite directions at the same time.

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obligation they respectively took upon themselves, and what penalty was incurred when the obligation was repudiated.[1] Rousseau seeks to imitate the method of Hobbes; but the result is ridiculous. The parties to the pact are declared to be on the one side the individuals and on the other the community[2] and this, though the community comes into existence only by virtue of the pact. The engagement made by the community appears at once, however, to be made in reality by the individuals. For, "each individual contracting, so to speak, with himself, finds himself engaged under a double relation, namely, as member of the sovereign toward the individuals, and as member of the state toward the sovereign." And Rousseau, after this sapient exposition, proceeds gravely to explain that there is no real opening here to apply the principle of the civil law according to which no one is bound by engagements made with himself; "for to be bound to one's self and to be bound to a whole of which one forms a part, are very different things."[3]

If Rousseau could have remained certainly faithful through a whole section of his work to the truth embodied in this last sentence, his theory of the state would have been important. But his grasp on the distinction between the collective and the distributive aspect of an aggregate was very uncertain. Nothing better illustrates this fact than his easy assumption, noted above, that a promise by a society is the same as a promise by each member of the society. The same confusion appears again and again in his treatise. He glimpses often the fruitful concept of a beneficent and all-determining force in the social organism; but he lacks the dialectic power to disentangle it from the mass of individualistic prejudice that obscures it. He is nearest success in the attempt in his detailed discussion of the notion of sovereignty.

[1] Dunning, Political Theories from Luther to Montesquieu, p. 278.

[2] ". . . l'acte d'association renferme un engagement réciproque du public avec les particuliers."—Contrat social, part i, vii.

[3] *Ibid.*, part i, vii.

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4. *Sovereignty and Law*

Rousseau's doctrine on this subject combined elements that had previously been considered incompatible with each other. The definition and development of sovereignty, as a concept of political science, had been almost entirely the work of those who, like Bodin and Hobbes, were defending absolute monarchy. By the liberalizing school of Locke and Montesquieu the idea of sovereignty was evaded as unnecessary in theory and dangerous in practice—a mortal foe to liberty. Rousseau, with characteristic boldness, proceeded to reconcile the absolutist with the liberal doctrine. He defined sovereignty with the fulness and precision of Hobbes, and gave it an abode and an operation that satisfied the feeling of Locke.

The social contract, Rousseau maintains, furnishes the solution of all questions about sovereignty. The body politic that is created by this contract is itself the only conceivable possessor of supreme power.[1] By the free act of those who enter into the pact all their rights and powers are resigned to the community, and their respective wills are merged into and superseded by the general will (*volonté générale*). By no possible process of reasoning or of fact, Rousseau holds, can sovereignty be traced to any other possessor than the body politic as a whole, or be identified in any other manifestation than that of the general will. He seizes with especial zest the idea of sovereignty as will, and uses it in many fantastic feats of pseudo-dialectic. His often absurd manipulation does not conceal, however, the real value of the idea. Hobbes had already exposed many of its possibilities as a clarifying agency in political speculation; but Rousseau gave the great impulse to that particular development which has centred about the idea of the social or group will.

The basis of will, Rousseau holds, is interest. The individual wills always what is for his interest. His interests conflict at many points with the interests of others; but at some point

[1] Althusius presented a doctrine of sovereignty in 1610 that was substantially the same as Rousseau's. *Cf.* Dunning, Political Theories from Luther to Montesquieu, p. 63.

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the interest of all is the same. This common interest is what makes the state possible. The general will is but the expression of what the common interest requires. The two ideas are inseparable in thought and in fact. If the interests of the individuals composing the state are at no point identical, a general will is inconceivable and society cannot exist. If an expression of will does not correspond to the common interest, it is not an expression of the general will and it lacks the quality of sovereignty. Only an act of the general will is properly called law (*loi*). Perfect generality is of the essence of it. Thus law can have no other source than the sovereign, that is, the community as a body politic. A rule or command prescribed by any other authority lacks the essential quality of law; and, conversely, a rule or command emanating formally from the sovereign body lacks the quality of law if its content or effect touches interests that are not general.

Sovereignty, conceived in such a way, is readily proved by Rousseau to be inalienable, indivisible and inerrant. It is inalienable, because the will cannot be bound by promises. "The sovereign can indeed say: I will now what such-and-such a man wills, or at least what he says he wills; but it cannot say: What that man shall will to-morrow, I shall still will." It can say: What that man shall will, I will do; but this is the formula of slavery, and pledges acts not conformed to the interest of the promisor. Since will in any true sense is inseparable from interest, the servile formula implies the dissolution *ipso facto* of the body politic that enacts it. "The instant there is a master, there is no longer a sovereign."[1] Such is the argument by which Rousseau disposes of the ancient dogma that the people may transfer sovereignty to a prince.

That sovereignty is indivisible is equally clear to Rousseau.

> The will either is or is not general, is that of the whole people or that of part of the people. In the first case the expression of the will is a sovereign act and makes law; in the second case it is merely a particular will or an act of the magistrat—at most a decree.[2]

[1] Contrat social, part ii, i.

[2] *Ibid.*, part ii, ii.

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All the distinctions so much debated by philosophers between the different kinds of public acts are unwarranted, Rousseau holds, so far as they imply a division of sovereignty. That there is legislative power and executive power; that taxation and judicature and the affairs of war and peace are variously administered—affects not at all the unity of the sovereign. An act of the whole people for the whole people is, regardless of any other feature of the act, a manifestation of sovereignty.

To prove that the sovereign cannot err is a task that evokes the best effort of Rousseau both as reasoner and as rhetorician.[1] He is required to meet the familiar charge that a democracy is peculiarly apt to stray from expediency and justice. He meets it ingeniously if not conclusively thus:

> It follows from the foregoing that the general will is always right and tends always to the public advantage (*utilité publique*); but it does not follow that the judgments (*délibérations*) of the people always have the same rectitude. A man always wills his own good, but he does not always see it; the people is never corrupted, but it is often deceived, and only then does it appear to will what is wrong.

Thus the virtue of the sovereign people is saved at the expense of its intelligence; and the inerrancy of the general will is established by the simple process of ascribing all wrong-doing to some other source. It is indeed not hard to see that by its very definition Rousseau's sovereign always wills the public good. Sovereignty is only another name for a generalized collective volition of that content. Difficulty arises, however, when the question changes from the abstract conception of sovereignty to its concrete manifestation. Rousseau's doctrine implies that a resolution adopted unanimously by a community is not necessarily an expression of the sovereign will. He distinguishes the general will from the will of all (*volonté de tous*). This latter is but the sum of all the particular volitions of the individuals about their private interests. The general will is the aggregate of such of these volitions as are common to all the individuals—such as concern interests that are common to all.

[1] Contrat social, part ii, iii.

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With this distinction in mind, it is easy to see that a resolution of the whole people lacks the quality of sovereign law if it deals with any matter that does not involve the true interest of every citizen.

One important source of the mistakes often made by the people is to be found, Rousseau says, in the partial societies, or parties, that spring up in the state. When a party is constituted, a new corporate interest appears, coming between the individual interest and the general interest. There is no longer possible that comparison of individual wills through which alone the general will is determined. Party interest intervenes and misleads the people, with the result that the will of the party is mistaken for that of the sovereign. Rousseau's conclusion is, like that of many earlier thinkers, that if parties exist at all in a state, there should be many of them. Where two great parties divide the people, the will of one or the other of them habitually supersedes the general will, and the state ceases in fact to exist.

Rousseau is at some pains to exhibit the limits of sovereignty.[1] They are manifest chiefly, we have just seen, as immediate inferences from the definition of the term: the sovereign cannot do what is not for the general welfare, and cannot intrude therefore into the field of purely individual interest. Is there, then, a sphere of individual rights secure against invasion by the state? In answering this crucial question Rousseau fairly bristles with paradox and contradiction. He declares that "as nature gives to every man an absolute power over all his members, the social pact gives to the body politic absolute power over all its members." This proposition is followed by reference to the distinction between the duties of the individual as a subject and his natural right as man. In pointblank contradiction of what was earlier said as to the terms of the social contract, Rousseau now observes: "It is agreed (*on convient*) that what each alienates by the social pact is only that part of his power, his property and his liberty which may be used with advantage by the community." This clearly points to a re-

[1] Contrat social, part iv, iv.

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served sphere of individual rights. But the next sentence turns the tables decisively against the individual: "It must also be agreed that the sovereign alone is judge of that advantage."

Formally, thus, there are no limits to sovereign power. Substantially, however, there are, Rousseau insists, the very real limits inherent in the nature of sovereignty. The relation of the individual will to the general will insures at the least the equality of all citizens before the law, and the rule of justice and equity. The sovereign community is limited to prescriptions that are for general, not for any particular utility, and it can impose no burden that is not alike for all. Rousseau's rhetoric in sustaining these amiable ideals is admirable; but his reasoning, while often very specious, never wholly disguises the vitiating assumption that an aggregate cannot possess attributes distinct from those of its component parts.

The most clear and self-consistent feature of his speculation on this general subject is that which deals with the idea of law. Even on this point his predilection for contract leads him into some cloudy quibblings about law as essentially a convention, to which the parties are respectively the community and its individual members.[1] But his central conception is made very distinct and suggestive. As has been stated above,[2] a law is a resolution of the whole people for the whole people, touching a matter that concerns all.

> The law regards the subjects as a whole and actions as abstract, never a man as an individual nor a concrete (*particulière*) act. Thus the law can determine that there shall be privileges, but it cannot give them to anybody by name; the law can establish a classification of the citizens and describe the qualifications for the various classes, but it cannot assign certain men to specify classes; it can establish a royal government and hereditary succession, but it cannot choose a king nor name a royal family . . .[3]

From this conception of law Rousseau concludes that

> it is no longer necessary to ask whose function it is to make laws, since

[1] Contrat social, part ii, iv.

[2] *Ante*, p. 393.

[3] *Ibid.*, part ii, vi.

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they are acts of the general will; nor whether the prince is above the laws, since he is a member of the state; nor whether the law can be unjust, since no one is unjust to himself; nor how one is at the same time free and subject to the laws, since they are merely registers of our own wills." [1]

No state is legitimate, according to Rousseau, unless it is ruled by laws, as thus defined; and every state so ruled, whatever the form of its government, is a republic. [2] The lucid interval in which he sets forth these fresh and striking conceptions is followed at once by a lapse into dreaming and rhetoric. For the practical realization of the republican state, as he has defined it, he has no suggestion save recourse to a "legislator," [3] a superhuman or divinely inspired being, to impose upon a people the institutional order that they are not qualified to discover for themselves—to enact that general will which they share but know not. In this recurrence to a useless and very much shop-worn device of political theory, [4] Rousseau exposes the purely idealizing tendency of his whole speculation. His brave undertaking to show the rational conciliation of liberty and authority ends in a trite glorification of Numa, Lycurgus and John Calvin, with a few practical suggestions, drawn largely from Montesquieu, as to the course most desirable for the next "legislator" that may descend upon mankind. [5]

5. *Government*

The distinction between state or sovereign and government is developed by Rousseau with the utmost exactness and con-

[1] Contrat social, part ii, vi.

[2] "J'appelle donc république tout État régi par de lois, sous quelque forme d'administration que ce puisse être."—*Ibid.*

[3] *Ibid.*, part ii, vii.

[4] The "legislator" was still doing hard service in philosophy; so sensible and practical a thinker as Montesquieu used him. *Cf.* Esprit des lois.

[5] Rousseau, in common with many intelligent contemporaries (notably Frederick the Great), was much impressed by the political spirit of the Corsicans, then just freeing themselves from Genoa. He says that the Corsicans are the one European people capable of legislating for themselves, and expresses a presentiment that "some day that little island will astonish Europe." (Contrat social, part ii, x.) Napoleon Bonaparte was born less than ten years after this was written.

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sistency.[1] While "state" denotes the community as a whole, created by the social pact and manifesting itself in the supreme general will, "government" denotes merely the individual or group of individuals that is designated by the community to carry into effect the sovereign will. The government is created not by any contract but by a decree of the sovereign; and its function is in no sense to make, but only to administer law. Government, to Rousseau, means executive power. The individuals to whom this power is assigned are the officers or the agents of the sovereign. Collectively they may be called "prince" or "magistracy." Whatever their titles—kings, senators, governors—their function and their relation to the sovereign are the same. Their power is merely what is entrusted to them by their superior, and may be modified, curtailed or entirely withdrawn at the discretion of that superior.

This doctrine is substantially that of the whole anti-monarchic philosophy of the two centuries preceding Rousseau. His own contribution consists not in any new emphasis on the subordination of the prince to the people, but in the conclusions derivable from his definition of the people as sovereign. He indulges in a good deal of superfluous metaphysics over his conception of sovereignty as will, aiming apparently to clear up problems that would be as well solved without it. Thus he sets forth with great gravity the rather distressing condition of a citizen who is a member of the government.[2] Such a one embodies three distinct wills: first, the will that rests upon his interest as a mere private individual; second, the will corresponding to the corporate interest of the magistracy; third, the will of the community as a whole—the sovereign general will. "In the order of nature" these wills are respectively the more active as they are the more concentrated: that is, the individual will prevails over the general. But the social order requires the domination of the general will. From this unfortunate contradiction Rousseau draws various inferences about the relative efficiency and desirability of different governmental arrangements—inferences

[1] Contrat social, part iii, i.

[2] *Ibid.*, ii.

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that coincide with the commonplaces of earlier theory and observation.[1]

His classification of governmental forms follows the ancient and familiar categories—monarchy, aristocracy, democracy and mixed. Democracy is that in which the sovereign assembly itself exercises the function of administrator. Such a union of functions does not appeal to Rousseau as a practicable system save possibly in a small and simple community. Sovereignty is necessarily democratic, in the most exclusive sense, in his theory, but democratic government is not suited to mankind.[2] Rousseau expresses indeed no definite judgment as to what form of government is best. He follows on this question the thought of the most judicious of his predecessors, and finds that each form may be peculiarly adapted to some particular set of conditions.[3] His discussion of the subject manifests a creditable knowledge and appreciation of the work of Montesquieu, in emphasizing the effect of varieties in economic and social conditions. But while the question as to what government is absolutely the best defies a catagorical answer, Rousseau finds a single simple and conclusive test by which to determine whether a given nation is well or ill governed. This is the census.

> Other things being equal, that government is infallibly the better under which, without extraneous measures, without naturalization, without colonies, the citizens show the greater increase in numbers. That under which a people is decreasing and dying out is the worst. Statisticians, the matter is in your hands: count, measure, compare.[4]

[1] *E. g.*, that monarchic government is more energetic than that of an assembly. *Ibid.*

[2] "S'il y avait un peuple de dieux, il se gouvernerait démocratiquement. Un gouvernement si parfait ne convient pas à des hommes." Contrat social, part iii, iv, end.

[3] *Ibid.*, part iii, viii.

[4] *Ibid.*, III, ix. In an interesting note at the end of this chapter, Rousseau develops the idea that neither general tranquillity nor a high state of intellectual and artistic culture is to be taken as a sign of good government. "Un peu d'agitation donne du ressort aux âmes, et ce qui fait vraiment prospérer l'espèce est moins la paix que la liberté." Which suggests the sapient observation of Thomas Jefferson, that a little revolution about once in twenty years is a good thing.

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Both the establishment and the extinction of governments subject Rousseau's principles to rather severe tests; but his assurance carries him over the gaps that his reasoning fails to bridge. To set a government in operation would seem to be impossible under the conceptions of sovereignty and law that he so carefully defines; for while the sovereign may declare what the form of government shall be—a general act and hence appropriate to the sovereign—it cannot name the persons who are to man the offices, since that, Rousseau explicitly declares, is a particular act, wholly beyond the competence of the general will.[1] Naming the magistrates is distinctively an act of government, not of sovereignty; and there is a difficulty, as Rousseau justly remarks, in understanding how there can be an act of government before the government comes into existence.[2] To one who has achieved the delicate feat of creating a state by a contract to which the state itself is one of the parties,[3] this later problem proves a matter, however, of no real concern. We perceive here, Rousseau says, "one of those astonishing properties of the body politic by which it reconciles operations that appear wholly contradictory." There takes place a sudden conversion of the sovereignty into government, so that with no perceptible change and merely by a new relation of all to all, the citizens, becoming magistrates, pass from general acts to particular acts, and from the law to its execution. That is to say, the sovereign people, assembled to institute a government, vote that a certain form shall be established, and vote that certain men shall fill the offices thus created. The first vote expresses the general will and is in the strictest sense law; the second vote is not an expression of the general will, and is not law, but a mere governmental decree. Between the two votes the assembly changes its character, just as a parliamentary body changes its character when it goes into committee of the whole.[4] The people act in one instance as sovereign and in the other as a democratic government. Since the process here described is inevitable in the establishment of monarchy, aristocracy and all

[1] *Ante*, p. 396. [2] Contrat social, part iii, xvii. [3] *Ante*, p. 391.

[4] Rousseau refers to the House of Commons going into "grand committee."

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other forms, it follows that, in Rousseau's thought, every government must be considered as originating in democracy.

Such being the method by which the inception of government is reconciled with Rousseau's first principles, let us examine their bearing on its normal operation. Law-making, in the strict sense, is of course a function not of the government but of the sovereign. It can be performed only by an assembly of the whole people. Representation is wholly out of the question in this matter. The general will can no more be represented than it can be alienated. The vaunted modern device of representative assemblies Rousseau regards as but an evidence of political decay. "Because of indolence and wealth they at last have soldiers to enslave the country and representatives to sell it."[1] Deputies may be chosen by the people for the despatch of certain duties; but they are merely agents, and have no final authority. "The English people thinks itself free; but it is greatly mistaken; it is free only during the elections for members of Parliament; so soon as they are elected the people is enslaved and becomes a zero." Whatever may be the inconvenience in large states, the whole people must be looked to as the sole legislator.

The question at once presents itself: shall the voice of the majority prevail as the general will? If so, how shall it appear that the minority, constrained by superior numbers, follows its own will and is free? Rousseau answers: only one political act requires unanimity, and that is the social pact.[2] No one is a member of the community except in consequence of his own deliberate volition. Within the state once formed both sovereign and governmental acts are determined by the majority. That the minority seems no longer free, because subject to laws to which they have not given their consent, is an illusion, due to a wrong way of looking at the question. When a project of law is laid before the assembly of the people, they are asked, not whether they approve or reject it, but whether it is or is not conformed to the general will. The vote of each is merely his opinion on that question:

[1] Contrat social, part iii, xv.

[2] *Ibid.*, part iv, ii.

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When, therefore, the opinion contrary to mine prevails, it is merely proved that I was mistaken, and that the general will was not what I thought it was. If my opinion had prevailed, I should have done what I did not will; then indeed I should not have been free.[1]

Such is the burlesque of reasoning by which Rousseau seems to think that he actually clears up one of the most troublesome difficulties in ultimate political theory. A deliberation of the sovereign people appears as a guessing match and the law by which men are free is fixed by a majority of guesses. The citizen who is in the minority is not a slave but only a poor guesser. Rousseau characteristically follows this word-juggling with a frank admission that he has begged the question at issue: "This assumes, it is true, that all the elements of the general will are in the majority; when they cease to be there, whichever side prevails, there is no longer any liberty."[2]

The decline and death of the body politic are inevitable, Rousseau holds,[3] and his analysis of the causes turns still on his doctrine of will. The government tends incessantly to invade the sphere of sovereignty; that is, to substitute the will of the magistrates for the general will. The greater intensity of volition in the smaller body[4] accounts for this. At the same time there is a ceaseless tendency of government to contract itself from democracy to aristocracy and thence to monarchy—and thus to increase the intensity of its volitions, as compared with those of the growing community. Only in small nations, amid simple conditions, does the general will have any assured operation. As a society grows and conditions become complex, not only the government, but also the numerous rival groups of private citizens strive to advance their special interests instead of the public advantage, and to substitute a particular for the general will. Because civilization, however deplorable, is inevitable, this process is certain. "The body politic, as well as the human body, begins to die at its birth and carries within itself the causes of its destruction."[5]

Something indeed may be done to retard decay and to pre-

[1] Contrat social, part iv, ii. [2] *Ibid.* [3] *Ibid.*, part iii, x, xi.
[4] *Ante*, p. 398. [5] Contrat social, part iii, xi.

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serve as long as possible liberty, equality and legitimate authority. Rousseau prides himself, and with some justification, on his suggestions in this respect.[1] They concern only the usurpatory tendency of the government; the vices of human nature that bring the other evils are beyond correction by political devices. There must be, he says, periodical assemblies of the sovereign people, for the purpose of maintaining the social pact. The meetings must be spontaneous—wholly independent of the government in summons and action. To the people thus assembled, two questions must be submitted: "First, is it the pleasure of the sovereign to preserve the existing form of government; Second, is it the pleasure of the people to leave the administration to those who at present have it in charge."[2] So long as a free expression of the people's will on these two points is obtainable at regular and not too long intervals, the usurpations of the government will be reduced to a minimum. As an additional guarantee of this result Rousseau lays down the principle that when the sovereign is assembled the functions of the government are *ipso facto* suspended.[3]

The great political objection to Rousseau's scheme of legislation by a general assembly of the people was, of course, the apparent impossibility of its application to large states. Rousseau admitted that where population was great and the territory extensive, there would be grave inconvenience. Not for a moment on that account would he concede that representatives should be allowed to constitute the legislature. "Where right and liberty are everything inconveniences are nothing."[4] In a large country the assemblies could be held at different places in turn, and thus distribute the inconvenience among all the citizens alike. But at all hazards the principle must be maintained that every citizen should be entitled to participate on equal terms in the supreme function of law-making.

[1] Contrat social, part iii, xii, xviii. "Il est bien singulier qu' avant le Contrat Social, où je le donne, personne ne s'en fût avisé."—Gouvernement de Pologne, ch. viii.

[2] Contrat social, part iii, xviii.

[3] "A l'instant que le peuple est légitimement assemblé en corps souverain, toute juridiction du gouvernement cesse, la puissance exécutive est suspendue . . . parce qu' où se trouve le représenté il n'y a plus de représentant."—*Ibid.*, part iii, xiv.

[4] *Ibid.*, part iii, xv.

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Despite all the tiresome metaphysics with which Rousseau surrounds his device for maintaining the state, it is easy to see that he foreshadows two very familiar institutions of nineteenth-century democracy, namely, the periodical popular vote on the question of revising the constitution and the periodical election of officers. Whether Rousseau would approve the manner in which his device is applied in many states of the American Union may be doubtful; but there is no room to doubt that the spirit of our constitutional provisions is very closely akin to the spirit in which his propositions were conceived.

6. *Strength and Influence of Rousseau's Work*

In the field of politics Rousseau's teaching was suggestive rather than conclusive; but the stimulating force of his suggestions long remained a cardinal fact of literature and history. His fancies, fallacies and quibbles often appealed more strongly than the sober observation and balanced reasoning of Montesquieu to the *Zeitgeist* of the later eighteenth century. Both the pure philosophy of politics and the practical statesmanship of the time clearly illustrate this. His spirit and his dogmas, however disguised and transformed, are seen everywhere both in the speculative systems and in the governmental reorganizations of the stirring era that followed his death.[1]

On the side of pure theory the most distinctive service of Rousseau was that due to his doctrine of sovereignty. The common interest and the general will assumed, through his manipulation, a greater definiteness and importance than philosophy had hitherto ascribed to them. They became the central features of almost every theory of the state. Through those concepts a way was opened by which the unity and solidarity of a population became the necessary presupposition of scientific politics. Rousseau thus contributed largely to promote the theory of the national state. His main purpose, however, was apart from this. Consciously he aimed only to devise a theory of sovereignty through which liberty and authority should be reconciled. His metaphysics and psychology, how-

[1] He died in 1778.

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ever ingenious, were not, as we have seen, equal to the task. He could offer no self-consistent reasoning by which it should appear that an individual's will was certain to be expressed in the general will, except in the same sense in which the individual's will was certain to be expressed in the will of a monarch to whom he had submitted himself. Rousseau failed, in short, to prove that the sovereignty of the community was any more compatible with individual liberty than the sovereignty of a monarch or an oligarchy. But his earnest and confident declamation about the virtues of the general will and the significance of the general interest brought those concepts into the foreground of political theory and evoked from more subtle reasoners than Rousseau more refined and self-consistent solutions of the problem he propounded. If their results were ultimately no more successful than his, that was due rather to the *a priori* conceptions of liberty and authority that were the common basis of this whole school of speculation than to any flaw in the logic by which the deductions from these conceptions were made. The assumption that true and perfect liberty could be predicted of only the non-social man, was fatal to any theory of political authority. Nothing could come out of this assumption save the empty paradoxes of Rousseau, the paralyzing transcendentalism of Kant, Fichte and Hegel, Rousseau's legitimate successors, or anarchy pure and simple. Making a state out of a group of perfectly free and independent individuals is like making a statue out of a heap of sand: some cohesive principle is necessary that it is beyond the art of the "legislator" or the sculptor to supply.[1] Aristotle furnished such a principle in his dictum that the social and political element is as strong and fundamental as the individualistic in man—that dependence on his kind is to be presumed of the normal human being. But in the eighteenth century the Aristotelian way of approaching politics made small appeal to intellectual men, and least of all to Rousseau.

Where Rousseau's theorizing touched government in its more

[1] "Eine Summe von Individuen ist niemals und kann gar nicht eine Einheit sein, so wenig als aus dem Haufen Sandkörner eine Statue wird."—Bluntschli, Geschichte der neurern Staatswissenschaft, 3te aufl., p. 348.

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practical aspects, his ideas were in some cases singularly fruitful. His sharp distinction between the sovereign and the government was chiefly responsible for this. He has been criticised for his doctrine that only the sovereign can make law. But his theory here was perfectly self-consistent, and it moreover proved adaptable to the explanation of certain concrete institutions of a novel kind that soon after Rousseau's death became the subject of knowledge and interest to intellectual men in France. Law (*loi*) in Rousseau's thought, was a term that could designate properly only a rule of perfect generality both in content and in application. Such being the case, his sovereign community was logically the only law-maker. The enactments of any so-called legislature that formed a part of the government could have only the character of decrees for carrying into effect the superior mandates of the true legislature. Rousseau's requirements for law in the strict sense were, we have seen, very exacting. The assignment of a citizen to an office, or the assessment of a tax upon specific citizens could not be effected, he held, by law; for such acts were not general but particular in their application, and hence involved not the general, but some particular interest. It is hard to accept Rousseau's reasoning in this detail; for he holds that the filling of an office must be treated as a matter rather of private than of public concern, and this is scarcely a tenable proposition. But apart from this minor point it is easy to see that Rousseau's "law" is substantially what came to be called fundamental law or constitution. Thus conceived, his doctrine of law-making is merely that now familiar dogma of political science, that the constitution is made by the sovereign people, and the government must conform its acts to this supreme law.

During the decade succeeding the death of Rousseau the interest of Frenchmen became by the course of events deeply enlisted in the affairs and institutions of the American States just freed from Great Britain. The political systems of these states presented in concrete realization principles of sovereignty and law that strongly suggested the doctrine in the *Social Contract*. The formal written constitutions in which the organization and action of government were prescribed satisfied very

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well the requirements that Rousseau laid down for law in the strict sense. They were on their face the expression of the people's will; they dealt with only the fundamental questions of the political order; and they were clearly distinguished, both by their formal source and by their superior authority, from the mandates of the governments that they set up. Through these constitutions, thus, the sovereignty of the people and its relation to government were exemplified in actual institutions on lines that ran closely parallel to Rousseau's theory. This coïncidence, fortuitous though it was,[1] did not fail of far-reaching influence on theory and on practice in the revolutionary movement that was impending.

We have now completed the tale of political doctrines put forth by Rousseau that were in any large measure both original and important. His prolific literary genius gave great vogue and fleeting influence to various dogmas that lacked one or both of these qualities. A pretentious theory of a civil religion[2] formulated the creed to which every citizen must subscribe in order to escape banishment from the state. The articles, fixed by the sovereign "not exactly as dogmas of religion but as sentiments of sociability without which it is impossible to be a good citizen or a faithful subject," declared belief in God, in a future life of happiness for the good and punishment for the wicked, in the sanctity of the social contract and the laws, and in no toleration for intolerance. This creed, with its characteristic concluding paradox, is but Rousseau's adaptation of a device that had been more soundly if less flashily exploited by Spinoza[3] and others. None of his predecessors, however, had ventured to denounce the Catholics as incapacitated by their purely religious belief for good citizenship—and this in a plea for toleration.[4]

[1] A trace of common lineage may be discerned in the indebtedness of both Rousseau and the Americans to the theories and institutions of seventeenth-century England.

[2] Contrat social, part iv, viii, "De la religion civile."

[3] Tract. Theol. Polit., xx, 21; *Cf.* Dunning, Political Theories from Luther to Montesquieu, p. 315.

[4] ". . . quiconque ose dire: 'Hors de l'Église point de salut,' doit être chassé de l'État . . . ."—Contrat social, part iv, viii.

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Besides this and other excursions into the theologico-political field, which always had a great attraction for him, Rousseau delivered many resounding judgments on the economic and fiscal problems that were uppermost in the political discussion of his day. Most of what was theoretically significant in his views was taken bodily from Montesquieu, and derived no force from Rousseau's adaptation.[1] It was for other thinkers, already making themselves felt when the *Social Contract* was written, to develop an effective doctrine on these topics. The Physiocrats, in this economic field, a notable group of theorists in moral and political science proper, and a multitude of seekers after practical reform in the French government, filled France with earnest debate, growing hot and fierce as the cataclysm of 1789 approached. In none of these classes was Rousseau's political theory accepted in its entirety. In all of them, however, his dogmas and his phrases were in some measure current coin, and in all was manifested the confidence so eloquently preached by him, that the way to human welfare could always be easily found by getting back to nature.

WM. A. DUNNING.

[1] *E. g.*, Contrat social, part iii, viii.

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THE REORGANIZATION OF MUNICIPAL GOVERNMENT IN PORTO RICO: POLITICAL[1]

I

THE circumstances under which sovereignty over Porto Rico was assumed by the United States imposed upon our government in a specially imperative way the obligation of reforming the political institutions of that Island so as to make them conform as nearly as possible to the best principles and practice of governmental organization and administration. The inhabitants of the island, at the time of the American occupation, for the most part not only welcomed the advent of American rule and received the soldiers of the United States with open arms, but were also genuinely desirous that, as far and as rapidly as circumstances would permit, American institutions and principles of government should be extended to the island. The governmental problem as it presented itself to the United States was thus, not simply that of assuming a general direction of affairs, such as has arisen in most cases where a new, undeveloped territory is taken over by a nation to be held as a colony, but the far larger and more complicated task of making over the political institutions and public laws of the land, and of modifying the very springs of political action so as to bring them into harmony with the great principles of political action underlying the American governmental system.

The first step in the carrying-out of this ambitious program was evidently that of the organization of a central government for the island. In this direction events moved with great rapidity. The island was occupied by the American forces under General Miles on July 25, 1898. Formal possession was assumed October 18 of the same year, and a military government was organized both for the direction of military affairs and

[1] The reorganization of municipal government in Porto Rico, as regards financial affairs, will be described in a second article which will appear in a subsequent number of the QUARTERLY.

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for the conduct of civil government. This régime lasted but a little over eighteen months, being supplanted on May 1, 1900, by the purely civil government now in force. It is unnecessary for us at this place to describe this form of government. It is sufficient to say that it provided for a governor, appointed by the President of the United States, by and with the advice and consent of the Senate, holding office for a term of four years; a legislature of two houses, consisting of a house of delegates of thirty-five members, elected every two years by the people of the island; an executive council of eleven members, appointed, as the governor, for terms of four years by the President of the United States with the advice and consent of the Senate; and a federal court and other necessary features of a governmental organization. Of the members of the Executive Council six were at the same time the heads of the six executive departments to which the conduct of administrative affairs was entrusted and not less than five, who in practice have always been those having no departmental portfolio, had to be native Porto-Ricans.

The most significant feature of this scheme of organization, certainly from the standpoint of the present study, is the fact that the organic act, by which it was established, conferred almost complete autonomy upon the insular government thus created to manage as it saw fit the affairs of the island free from any direction or supervision on the part of the Washington government. It is true that all legislation enacted has to be reported to Congress, which body has the right of annulling such action, but, up to the present time, no attempt has ever been made to exercise this power. To the island government itself there was left all the responsibility of working out the thousand and one problems involved in the readjustment of existing laws and institutions so as to make them meet the new conditions and to conform to American principles which were adopted as the ideals of the new government. Among these problems none went more to the heart of the whole problem, or affected more deeply and fundamentally the life of the people, than that of the reorganization of the municipal government. Both on account of the inherent importance of the undertaking, and because what has

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been done has been accomplished by the insular government itself and has not been imposed upon the island from the outside, the complete, and, it may be said at the outset, the wholly successful reorganization of the municipal government of Porto Rico will merit unusually careful consideration.

In another place[1] the author has, in connection with a general description of the government of Porto Rico, given a comparatively brief account of the form of municipal government that has been established. Both the purposes of the work in which that account appeared and the limitation of space prevented the consideration there given from being more than a general summary of the provisions of the system. Especially was this sketch incomplete in that no opportunity was afforded of describing the results obtained under the new system. In the present article, and the one to follow, it is desired to lay especial emphasis upon this feature. It is my desire to bring out as clearly as may be the really remarkable results that have been obtained under the action that has been taken; how a real civic pride has been created where practically none existed; how the municipalities which, with few exceptions, were in a condition of bankruptcy, have, without exception, been placed upon a firm financial basis so that every obligation is promptly met as it arises; how municipal funds, instead of going almost entirely for salaries and works of little or no utility, are now being spent for public works and for the performance of functions which constitute the only reason of existence of local governments; how accounts are systematically and properly kept; how fraud, and even incapacity, has been reduced to a minimum; how individual rights are respected, instead of violated; how, in a word, the people of the island are for the first time in the island's history enjoying a proper administration of their local affairs, protection from arbitrary exaction and a real return for the sacrifices they make in the way of the payment of local contributions.

Properly to appreciate this revolution which has been worked in the short space of ten years, at least some account should be

[1] W. F. Willoughby, Territories and Dependencies of the United States: Their Government and Administration (American State Series, New York, The Century Company, 1905).

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given of conditions under the prior régime. In this account the effort will be made to give a general idea of conditions as they actually existed and affected the life of the people, and of the spirit underlying the governmental organization then in force, rather than to present a technical study of the legal provisions of the system then obtaining. This, after all, is the feature of real importance, since it is the unanimous opinion of those who have given special study to Spanish public institutions that it is in respect to the spirit in which legal provisions are applied, and to the actual work of administration performed, rather than in the technical provisions of the laws themselves, which are often drawn with great skill, that the government of communities under Spanish rule falls short of meeting the essential ends for which such government exists.

II

Until Porto Rico as a whole had succeeded in obtaining from the mother country a certain measure of autonomy it was hopeless to expect that anything approaching local self-government could develop. In point of fact, until about the middle of the last century, each municipal district into which the island was divided was administered by an army officer who reported directly to, and was under the almost absolute orders of, the royal representative, the captain-general of the island. About that time, however, there was inaugurated the policy of giving to the more important municipal districts a local government administered through civilians named by the central military authority, and by 1870 practically all of the municipalities were free from direct army administration, though the power of the governor-general to intervene in local affairs had been but little, if at all, impaired.[1]

This year, 1870, will always constitute one of the most

[1] Report of the Military Governor of Porto Rico on Civil Affairs (Annual Reports of the War Department for the First Year ending June 30, 1900), page 32. This report is by Brigadier-General George W. Davis, who was military governor of the island from May 9, 1899, to April 30, 1900, and is an exceedingly able and interesting account of conditions as they existed immediately prior to the organization of civil government.

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important dates in the political history of the island. By a law of August 28 of that year, Porto Rico was made a province of Spain, and was endowed with a legislative body having strictly limited powers known as the Provincial Deputation, the members of which were to be elected by the people of the island. Two years later, by royal decree of December 13, 1872, the municipal laws of Spain were extended to Porto Rico. This decree provided for the election of mayors and town councils, but made all ordinances enacted by the latter subject to revision by the Provincial Deputation. This undoubtedly represented an important advance by the island in respect to its powers of self-government, both as regards insular autonomy and local self-government.

This period of liberal ideas was, however, short-lived. In 1876 the policy was reversed. Restrictive laws were again enacted, principally in the direction of stultifying popular representation in municipal bodies. The right to elect mayors was forfeited and was replaced by the appointment of those officials by the governor-general from a list of three candidates presented by the town council, or, if such candidates were not to his satisfaction, of any person he might desire to nominate. This practically gave the governor-general control over the municipalities, as, under the municipal law, the mayors could suspend the execution of ordinances of town councils and submit them to the governor-general for his decision as to revocation or enforcement.

In 1896 the tide again apparently turned. By royal decree of December 31, 1896, a new municipal law was enacted which, in theory at least, lessened the powers of the governor-general in local affairs and conferred greater powers upon the people to select their local officials, and upon such officials to administer local affairs. In the following year the so-called "autonomic government" was established by royal decree of November 26, 1897. It was now, however, too late. Whatever may have been the extent to which these two decrees provided for a liberal form of government, no real opportunity was afforded for either of them to give practical results. The American occupation took place in 1898, and with it began the new régime

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for the island. As regards local affairs, it is doubtful if the decree of 1896 would have brought about any tangible decentralization of power or development of local self-government, in the sense that real responsibility for the administration of local affairs would have been vested in local authorities, even had the American intervention not taken place. Both General Davis, in his report to which allusion has already been made, and Doctor Hollander, in his report as treasurer under the new civil government for the year ending May 1, 1901, have made this point very clear and we cannot do better than quote their words:

Thus, the former in summarizing his general conclusion regarding the then existing condition said:[1]

As has been noted, all legislative power, even to the smallest details, was reserved to the sovereign and his ministry. All appointments to office were also controlled from Madrid, so there was no possibility of local initiative in any function of government save by petition. For administrative matters the governor-general was the repository of all powers. He was provided with his council of administration, and board of authorities, both purely advisory bodies, the latter being made up principally of the same men who sat in the council, and members of both bodies being appointed by the Crown. On certain matters the governor was required to hear the council, but he was not obliged to adopt their views. This council was a sort of a ministry, but not a responsible one. The board of authorities the governor could hear or not as he chose, and he could adopt or reject their opinions.

While the delegates of the provincial deputation were supposed to be elected, yet in fact they were the choice of the governor, for he could in practice remove or suspend the members at will.

This deputation was purely an administrative body, a sort of buffer between the municipalities and the government in respect to all questions of a local nature that might arise. The will of the governor practically controlled the disposition of the deputation. The two regional delegates of the governor were his inspectors, or, it might be said spies, over the municipal authorities, and these latter never presumed on any action that was not sure to be acceptable to the delegates.

The governor had the right, if he chose to exercise it, of appointing all the mayors. As the town councils, or aldermen, knew this, they

[1] Pp. 36 and 39.

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never proposed a mayor until they knew that the election would be approved at San Juan. . . .

While the deputation was over the municipalities, and a sort of buffer between the governor and the alcaldes, yet the latter were reached more directly and effectively by other agencies. The deputation was concerned only with administrative matters, but in political affairs the delegates of regions had all-important functions. They were no more and no less than lieutenant-governors, or delegates to whom was intrusted an executive inspection and inquisition over municipalities. As they were controlled by no definite written rules of law, the will of the governor controlled and governed them wholly. Alcaldes naturally treated them with great deference, for the delegates were masters of every situation, being to all intents and purposes the governor himself, who could, and often did, remove municipal officers; besides, all original appointments of alcaldes and their assistants could be made by the governor if he chose to exercise his prerogative.

Notwithstanding the fact that councilors were required to be elected, and therefore were supposed to represent the will of the people, yet there could be no real autonomy and self-control exercised by the town councils, who were really subservient in all things to the superior power in San Juan. The deputation controlled the council in administrative matters, and the delegates in things political. It is not surprising that honest and efficient municipal government should not exist; in fact, it would have been a miracle if, with all the constraints and inspections to which the local authorities were continually subjected, good administration had ever been found. The miracle did not supervene, and the type of municipal government found by Americans was but another name for misrule.

Dr. Hollander is equally emphatic in the statement that any such thing as real self-government was at that time non-existent:[1]

The most conspicuous fact in the organization of local government in Porto Rico prior to American occupation was the extent of central administrative control over local activities. Local self-government, in the sense in which it is understood in the United States, was practically non-existent. The "distritos municipales," or municipal districts, were administrative agencies of the central government

[1] First Annual Report of the Governor of Porto Rico, May 1, 1900, to May 1, 1901, page 144.

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without corporate power or independent life. It is true that the organization and functions of these local bodies were defined by formal law (royal decree of December 31, 1896), but this delegation of power was significantly limited by the provision that "the governor-general and the colonial secretary, in the respective cases, exercise the high inspection over all the services of the island no matter in what shape they may be rendered, in accordance with the powers inherent to the sovereignty reserved by the laws to the government of the nation." The autonomic constitution of 1897 nominally vested the municipal districts of Porto Rico with powers of self-government, but this law was never actually established and received recognition neither de jure nor de facto. In practice, every act of a municipal council, from the passage of a market ordinance to the appointment of a local policeman, was liable to scrutiny and, if deemed necessary, to revision by the central government.

In financial matters, this insular supervision was detailed and real. Municipal budgets, accounts, and taxes were submitted to the central government or its agencies for approval, and were freely disapproved or suspended when in violation of established procedure or in conflict with the financial policy of the insular government. Statutory dependence in financial procedure was supplemented by more informal, but no less effective influence exerted by the central government in the appointment of the municipal personnel.

By this time the definite division of the island into municipal districts had been accomplished. The island was divided into sixty-six districts, each constituting a municipality. In each there was, with rare exceptions, only one urban settlement of any considerable population, which settlement always bore the name of the district and constituted the seat of government. There was no distinction between the government of the urban center and the rural parts of the district. The government of each district, or *municipio*, as it was known, was vested in a body known as the *ayuntamiento*, which consisted of the *alcalde*, or mayor, and the municipal council. The *alcalde* was at once the chief executive officer of the municipality and the president of the council.

Although the United States military government did what it could to improve the administration of local affairs and interpret the law as it existed in a liberal spirit, time and opportunity

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were lacking in which to make really organic changes. Its most important work consisted in efforts to reëstablish local government on an election basis. Elections were successively held in the different municipalities during the fall and winter of 1899 and 1900, and officers who were the choice of the people were installed. General Davis reports, however, that complete success was not obtained in improving local conditions in this way; that political spirit ran so high that, but for the presence of American troops ready to intervene, bloodshed would probably have resulted; and that it was impossible to break away from the old practice where the *alcaldes* dominated the local councils and ran things much as they chose.

Comparatively little attention also could be given to municipal affairs during the first session of the legislative assembly of the present civil government in 1901, except as the subject of municipal taxation was indirectly treated of in the general revenue law which was then enacted and which will receive attention in another place.

This was the situation when, in the Fall of 1901, the writer went to Porto Rico as treasurer of the island. In that capacity, since to the treasury department had fallen the duty of exercising the control over the financial affairs of the municipalities that was possessed by the central government, and in that of chairman of the committee on local government of the executive council, to which position he was, on taking his seat in that body, appointed, he found himself, probably more directly than any of his colleagues, vested with the responsibility of taking the action required for the reorganization of the existing system of local government, and the devising of means for relieving the intolerable conditions that existed in this field. Steps were immediately taken to this end. Before entering upon an account of what was done it is desirable, however, to summarize more clearly the chief defects of the existing system, the correction of which had specially to be kept in view.

III

These defects were both of organization and of administration. As regards the first, attention has already been called to one of

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the greatest evils of the system—the extent to which, both in theory and in practice, direct control was exercised by the central government, not merely over the administration of local affairs, but also over the selection of the persons through whom such work was to be performed. If this power on the part of the central government had been exercised for the purpose of compelling honest and efficient action on the part of the municipal authorities there would have been some justification for its existence. As it was, however, it was used chiefly to promote the political or personal ends of those in power. The result was a condition of affairs where no real powers of self-government existed, where local civic pride in the proper sense of the term was almost non-existent, and where scarcely a pretense was made by those holding office to place the public welfare above their own and their friends' interests, where the two conflicted. In law and in practice, therefore, the essential principle of good government was violated in the failure to bring home to persons holding office their political obligations. As the author has elsewhere[1] stated,

> as long as this system was maintained, all idea of educating the people in the principles of responsible and honest self-government was hopeless. If such a government was ever to be built up on the island, it was imperative that a simple and more direct system should be devised —one in which the officers should have real powers of action within their sphere of duties, and in which they could be held to rigid accountability in case they failed properly to perform them. That which needed to be done, in other words, was the abolition of the old practice whereby permission had to be obtained in advance, and under which real responsibility could never be felt, and the adoption in its place of a system under which direct powers of action should be given primarily to the local authorities and control by the central government be exercised merely in the way of enforcing the proper performance of these duties.

A second organic defect was the failure of the system to make any distinction between the government of the larger and of the smaller municipalities. As General Davis states in his

[1] Territories and Dependencies of the United States *etc.*, page 124.

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report already referred to,[1] "they were all styled municipalities and had attributes, powers and responsibilities which, under our special laws, are conferred upon what we call cities. Toa Baja, with 4,000 population, has a government that is the same in all essentials as the government of the municipality of London or New York." The smaller municipalities representing poor rural districts were thus compelled to maintain the same set of officers and an administrative machinery as elaborate as that of the wealthy districts. The result was that in many of the districts all of their resources were required to pay purely administrative salaries, leaving little or nothing available for works of public utility.

A third, and fundamental, criticism of the system was the extent to which powers, executive, legislative and judicial, were concentrated in the same hands. The *alcalde*, as chief executive and president of the municipal council, and exercising judicial or quasi-judicial powers, completely dominated the government. One of the greatest evils of this as well as other Latin-American countries—the spirit of *caciqueism*, or the existence in each community of one or more persons who absolutely controlled public and, to a considerable extent, even private affairs, with a resulting deadening of individual independence and initiative—was thus fostered and given almost a legal basis.

Turning now to the matter of the manner in which this system was administered, it would seem that there was scarcely a feature of municipal misrule that did not exist in acute form. Offices were used by their incumbents for the furtherance of their personal ends, laws were administered in an arbitrary and illegal manner, friends were favored and enemies oppressed, and taxes due from the former were collected with leniency, or not at all, and those due from the latter with extreme vigor. Doctor Hollander reported that the most important service rendered by his department in respect to the supervision of municipalities was the prevention of the collection of unauthorized or illegal taxes. If a man fell into disfavor with the ruling authorities he would

[1] Page 40.

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be annoyed in every way. A special tax might in effect be imposed upon him indirectly, by a law framed in such a way that, though apparently general in character, it in reality fell with especial hardship upon him. To a very considerable extent, therefore, the very foundation principle of equality of treatment of citizens before the law was being constantly violated.

From the standpoint of work performed or of services rendered as well as from that of financial operations, conditions were equally deplorable. Of the sixty-six municipal districts into which the island was divided, all but two were heavily in debt. In the cases of not a few of the municipalities this condition of indebtedness was so heavy, in comparison with available resources and annual income, that for practical purposes they were insolvent. These debts consisted, in many cases, of obligations incurred years ago. In the majority of the cases there was no pretense of paying debts as incurred or salaries as they fell due. It was the ordinary thing for municipal officials to wait for months before they received their pay. Whenever any money was received by municipal treasurers bitter quarrels arose as to which of the debtors should receive preference in payment, and usually the decision went according to personal favor. To make matters worse, there were no signs of improvement. On the contrary, conditions were steadily becoming worse. Bankrupt as many of the municipalities were, they still continued to make appropriations far in excess of the total receipts that they could possibly expect to obtain. It is true that under the law then in force the municipalities were required to make the two sides of their annual budget balance, but this afforded no obstacle to extravagant appropriations. All, or nearly all, of the municipalities had upon their books a large amount of unpaid taxes which, for one reason or another, had not been collected. Each year the total of these taxes figured as an item of income to be obtained during the year to which the budget related, and appropriations were made against it, although it was a matter of certainty, and well known to the municipal officials, that little, if any, actual income would be obtained from this source. Thus, year after year, the municipalities made appropriations against the same unrealized income. If this resource failed, the mu-

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nicipal officials could always swell the income side of the budget, in order to justify correspondingly large appropriations, by raising the amount to be expected from "miscellaneous or unexpected receipts." The result was that this obligation, namely, that municipalities should not make appropriations in excess of anticipated receipts, was in practical operation a farce.

While the municipalities were thus steadily adding to their indebtedness, they were, on the one hand, failing to make any adequate provision for the carrying-on of works constituting their most essential functions, and, on the other, making extravagant expenditures for salaries and works of little real public utility. After provision had been made by them for the salaries of municipal officials and an unnecessarily large number of employees, little remained for the performance of such work as the cleaning and lighting of streets, removal of garbage, maintenance of hospitals *etc.* Actual progress in the way of the construction of urgently needed, new public works, such as markets, slaughterhouses, paving of streets, construction of new roads *etc.*, was practically at a standstill.

Finally, not only was there thus scarcely a pretense of efficiency in the administration of the affairs of many of the municipalities, but, worse still, actual corruption was only too prevalent. It was open and notorious that in many of the municipalities public funds were not duly accounted for, expenditures were improperly made, and money was being stolen by municipal officials or diverted into improper channels.

IV

It was easy to see these evils, but, in view of the peculiar conditions obtaining in the island, it was far from a simple matter to work out a solution of the problem that they presented. Notwithstanding this, almost complete success has been obtained, until today the government of the municipalities of Porto Rico compare—in respect to the logical delegation of powers and imposition of responsibilities; in meeting that fundamental problem of democracy, the combination of administrative efficiency with popular control; in securing a return for sacrifice made in the way of payment of contributions; in honesty, and even, to

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a very large extent, in efficiency of administration—with that of municipalities in almost any of the states of the Union. The accomplishment of this result is one of the most important works standing to the credit of the present civil government, and in which the municipalities themselves can take legitimate pride.

A consideration of the manner by which this happy outcome was achieved naturally falls into two parts; that having to do with steps taken to reorganize the framework of the government itself, and that having for its purpose the financial rehabilitation of these local bodies. Clearness of exposition is obtained by considering each of these two classes of problems, the political and the financial, separately. While the two in a way had to be considered in relation to each other, the first had to receive a definite solution before any substantial progress could be made in relation to the second. It is to the political half of the problem, therefore, that we first direct our attention.

Enough has been said regarding the existing system to make plain that it was fundamentally bad, and that, if the needs of the situation were to be met at all, it had to be revolutionized and a new system established that should rest upon radically different principles. A bill was accordingly reported from the committee on local government of the executive council, which, though comparatively brief and compact in form, was intended, when enacted into law, to provide a complete municipal code for the island, and to permit the repeal of all other laws and ordinances on the subject. This bill went through the usual vicissitudes of legislation, received a certain amount of amendments, but, with no substantial changes, became the general municipal act of March 1, 1902. This act has been amended, as will be described hereafter, in certain particulars, some of them of considerable importance, but no substantial change has been made in the theory or framework of government then created. The general provisions of this act will first be described, after which it is desired to comment more fully upon certain of its more important features, and particularly to point out the theories upon which they are based.

The first point that had to be decided in the framing of the

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act was whether the existing division of the island into municipal districts should be preserved, or whether the attempt should be made to introduce the system prevailing in the United States of a division between city, town and county governments. It was decided, and experience has amply proven the wisdom of the decision, to adopt the first policy. This determination was arrived at, both because it simplified and facilitated greatly the work of reorganization, and because it offered certain fundamental advantages. The division of the island into districts was not merely the only system of political subdivision of the island for local administrative purposes that the people had ever enjoyed, but, following the system of France and other Latin countries, it was the one with which they were most familiar through their studies and travels. The really determining points, however, were: that there was no room for a division of governmental functions between the county and the town, since, in the great majority of cases, the single urban settlement of the district was no larger than our ordinary county-seat; that an attempt to make the distinction would have necessitated two sets of local officials, and consequent multiplicity of officials, divided responsibility and lessened importance for each; and, most important of all, that the municipal district, as distinct from the municipal-county system, lent itself far better to the establishment of the central control and supervision over the administration of local affairs, which it was believed was absolutely essential if honesty and efficiency were to be secured. It is not to be denied that, as a general principle, there is some need for making separate provision for the government of urban and rural communities. In Porto Rico, however, this need exists to but a very slight extent, due to the fact, as already stated, that the urban settlements are for the most part small communities, and the further fact that the interests of such settlements and of the rural portions of the district are much more nearly identical than in the United States on account of the practice which largely prevails of farm owners living in the towns. Such demand as did exist for distinguishing between the needs of the two it was found possible to meet, moreover, through the division of the municipal districts into classes

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according to their importance, and through the imposition of the obligation upon the municipalities to expend a certain proportion of their income on roads and schools that were for the direct benefit of the rural districts. Furthermore, the retention of the municipal district in no way interfered with the making of special provisions for the government of the more important towns by the granting to them of charters, if at any time it should be found desirable to do so.

At this point it should be said that the opinion did strongly prevail that the island had been excessively subdivided, and that a great economy and increased efficiency could be obtained by abolishing the less important districts as entities, and annexing them to adjoining districts. In consequence, at the same session of the legislature, that of 1902, in which the general municipal law now under consideration was enacted, there was passed another act providing for the consolidation of twenty of the smaller or less populous districts with the remaining forty-six. This act worked badly from the very start. In practical operation the districts absorbed, though paying their share of the taxes, were almost entirely neglected in the employment of the funds so received. Their inhabitants resented bitterly having their special status abolished, and found a real hardship in the greater distances they had to go in order to attend to any matters requiring action before public authorities. The act was accordingly repealed March 5, 1905, and a return was made to the original division of the island into sixty-six districts.

Turning now to a description of the form of government enacted for each of these districts, it will be seen from the account that follows that the general form of organization of municipalities in the United States was followed. Departing radically from the old system, a clear separation of powers is made between the legislative, the executive and judicial functions. The legislative, or ordinance-making power, was vested in a municipal council consisting of five or nine members, according to whether the population of the municipality was less than 20,000 or whether it equalled or exceeded that number. This provision was changed by the act of March 8, 1906, at which time a general revision of the details of the act of 1902 was

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accomplished, so that a division of municipalities was made into three, instead of two, classes; and the still more important change was made that municipal elections should be held every four, instead of every two, years. Any one who has had any experience with the troubles incident upon the conduct of elections in the island will appreciate the gain accomplished by this change. The making of three, instead of two, classes of municipalities was also an improvement in that it permitted of the throwing of the four chief cities, San Juan, Ponce, Mayaguez and Arecibo, into a special class, and of regulating still more closely the maximum salaries that might be paid municipal officials. Under this act, the municipal councils were given a membership of nine, seven and five, according as they belonged to class one, two or three.

At this point it is well to state that the division of the municipalities into three classes is not for the purpose of establishing any essentially different scheme of government, or of making any different grant of powers in each, but solely with the view to ensuring a simpler and more economical administration in the poorer municipalities. This finds expression in the smaller council membership given to the less important municipalities, as just noted, in the provision that, in municipalities of the second and third classes, the same official may, in some cases, if the municipal council so decides, and in others, must, perform the duties of two offices with the compensation attached to only one of them, and in the fixing of a different scale of maximum salaries that may be paid by municipalities to their officials in each class. In like manner, as will be seen hereafter, a higher maximum schedule of industrial and commercial license taxes is authorized in municipalities of the first class than in those of the other two classes.

From this digression we will return to the organization and powers of the municipal councils. The members serve without pay, and no member is permitted to hold any other public office or employment the compensation of which is paid out of public moneys, or to be interested, directly or indirectly, in any contract with the municipality. All vacancies in this council, occurring for any reason whatever, are filled by appointment

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by the governor until the next election. If a member fails to attend three consecutive meetings of the council, without being duly excused by that body, his office is declared vacant. The meetings of the council must be public and must be held at regular intervals, with a frequency of at least once a week. Special sessions may be called by the president of the council when he thinks that the public interests require it, and he must do so on the request of the mayor or one-third of the members of the council. The council elects by secret ballot its own presiding officer, known as President of the Council, and a substitute president. Should both president and substitute be absent at any meeting the oldest councilman present presides.

The powers of the council are exclusively of a legislative character. These comprehend, as set out in section 25 of the municipal law, authority to enact ordinances in relation to:

(1) the levying and collection of such property, license and other taxes as they are authorized by law so to do; (2) the survey, opening, paving and lighting of municipal streets and roads; (3) the survey and opening of municipal parks and promenades; (4) drainage and public water supplies; (5) public bathing (establishments) and lavatories; (6) fairs, markets and slaughter houses; (7) municipal libraries; (8) municipal cemeteries; (9) construction of buildings and other necessary public improvements; (10) to construct, maintain and operate docks, bulk-heads or other harbor improvements (subject to the provisions of the act of Congress of June 11, 1906, relative to harbor improvements in Porto Rico, and provided that the consent of the Executive Council has first been obtained); (11) municipal jails; (12) police regulations in relation to public health, sanitation and sightliness not inconsistent with law; (14) police regulations in relation to each of the functions enumerated herein and to the public welfare; (15) to determine the number of municipal employees and fix their salaries; (16) to cause a census to be taken of the inhabitants of the municipality. Provided, that such census shall not be taken within one year prior to the date of a general election in the island.

The succeeding section confers upon the council the power to fix the penalties for infraction of any municipal ordinance by way of fines, not exceeding fifty dollars, or imprisonment not exceeding fifteen days, or both.

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There is still another power possessed by the municipalities which is of especial interest as relating to a line of work not usually within the powers of a local body. The law thus provides that

> any municipality, by duly enacted ordinances of the municipal council, by and with the consent of the Executive Council of Porto Rico, may provide temporarily for the slaughter of cattle and the sale of meat and the baking and sale of bread by the municipality. The meat and bread shall be sold to the inhabitants of the municipality at the valued cost to the municipality, plus ten per cent, and all receipts therefrom shall be covered into the municipal treasury.

This rather remarkable authorization to the municipalities to engage in such lines of business as the selling of meat and bread, an authorization which has in a number of cases been made use of, was given by the legislature in order to meet the strong tendency, which exists throughout the island, toward the monopolization of the preparation and sale of these articles of necessary consumption. Again and again complaint has been made to the insular authorities that in this or that town one or more men have succeeded in getting into their hands the entire business of furnishing meat or bread to the inhabitants and were charging exorbitant prices. Municipal officials stated that, in their opinion, the best way to meet this situation was by conferring power upon the municipality itself to enter the field. This opinion was accepted, with the safeguard that in each case the approval of the executive council must be obtained. In practice the provision seems to have worked satisfactorily. The mere fact of its existence has undoubtedly had a tendency to restrain monopolizing.

Although the enumeration of powers granted to municipalties that has been given is a broad one, it should be noted that in three important directions the jurisdiction is either very limited or does not exist at all. These are education, police and administration of justice.

At the first session of the legislature in 1907 a general education act was passed which provided for the division of the island into school districts coterminous with the municipal districts;

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the erection of each such district into a body corporate; the election for each, at the regular elections, of an unsalaried board of three members; and the entrusting to such boards complete jurisdiction in respect to all school matters, in so far as such jurisdiction was not exercised by the commissioner of education. Although these bodies are thus completely independent of the municipalities, their entire income is obtained from the latter. The law thus provided that each municipality should pay over to the school board for its district not less than ten, and not more than twenty, per cent of all receipts from taxes. This provision was subsequently changed, in 1902, so as to make this proportion fifteen and twenty per cent respectively, and later, in 1904, still further changed so as to make the payment uniformly one of twenty-five per cent of all receipts of the municipality from the general property tax, instead of a percentage of all tax receipts. Each of the changes, it should be said, materially increased the amount of money to be paid to the school boards. Another act, passed in 1902, conferred powers upon the municipalities to levy a special school tax of one-tenth of one per cent upon property as assessed for purposes of general taxation. With the levying of this tax all intervention on the part of the municipality ceases.' Here, as well as in the case of the twenty-five per cent of receipts from the general property tax, the moneys realized are paid directly to the school boards, and thus do not even pass through the municipal treasury. It may almost be said, therefore, that the whole matter of education has been taken entirely out of the hands of the municipality and vested in other authorities.

Personally it is the opinion of the author that this whole scheme of administration of school affairs has been a mistake. Leaving aside for the moment the question as to whether, at the outset at least, when an entirely new system was being inaugurated, it would not have been better to have left more power in the hands of the commissioner of education, it is my opinion that if the administration of school affairs was to be decentralized, use should have been made of the municipal governments, instead of resort being had to the creation of new bodies corporate. It is desirable everywhere, and

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nowhere more so than in Porto Rico, that the attention and interests of the people should, as far as possible, be concentrated on a few offices, instead of being distributed among a larger number. It would have been an easy matter to have provided by law for the establishment in each municipality, of either a standing committee on education of the municipal council, or of a more or less independent managing board under the jurisdiction of the municipal authorities. The provision, moreover, that these school boards should be elected, not only throws the whole subject of education, in so far as these bodies exercise power, into politics, but it is a very serious question whether it is possible to secure as good men and as good service in this way as under a system whereby the members hold office by appointment, or selection in some other way. From the standpoint of the municipalities, the system established was thoroughly bad, in that it took away from these bodies one of the most important functions of local government, lessened correspondingly their importance, and, by so much, stood in the way of making the municipalities strong and vigorous bodies through which the people of the island might administer their local affairs. It is of course to be admitted that something can be said on the other side, and it is only fair to state that many of the author's colleagues have not agreed with him on this point. Whatever may be the strength of the argument contrary to the position here taken, however, there can be no doubt that the multiplication of officials, the necessity for keeping two sets of accounts, and the lessening of the sphere of influence of the municipalities, were unfortunate features of the policy adopted.

In still one other direction the mistake was made, though later happily corrected, of splitting up local functions, and intrusting a certain class to specially created bodies, instead of leaving such work to the municipal authorities. Reference is had to the creation of boards of road supervisors which came into existence in virtue of a law enacted March 1, 1902, and which were abolished by the act of March 8, 1906, revising the general municipal law. Their character and the operations had under this system were carefully considered by the author in his re-

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port as treasurer of Porto Rico for the year ending June 30, 1906. As the failures of attempts at reform are often equally as illustrative as successes achieved, it is probably not out of place here to reproduce a part of the account there given. The report reads:

> The system of road districts was created by act of March 1, 1902, which provided for the division of the island into seven road districts corresponding to the seven election districts, and the election in each, at the time of the regular biennial elections, of a board of road supervisors. This act, as subsequently amended, provided that eight per cent of all collections on account of general property taxes assigned to municipalities should be paid over to such boards. The theory on which this system was created was that it would be possible to secure as members of the board prominent taxpayers and landowners who would be in a position and be willing to devote themselves to the work of road improvement to a greater extent than could be expected of the municipal councils, and that also roads running through more than one municipality could be provided for. The act, however, worked badly from the start. It necessitated the creation of a special machinery, the expenses of which absorbed a considerable portion of the revenues of the board. It at the same time weakened the powers and responsibilities of the municipalities. Constant friction also resulted in the selection of roads to be improved, it being claimed by many municipalities that other municipalities received a more-than-proportionate part of the benefit of the funds expended. In view of these facts a provision was inserted in the municipal law ordering the abolition of the boards on and after July 1, 1906, and providing that the affairs of the old boards should be wound up and their outstanding resources and obligations apportioned among the respective municipalities. In abolishing these boards, however, the legislature desired to retain the obligation that municipalities should devote a portion of their income to road-improvement work. It accordingly provided in the new law that the eight per cent of the general property taxes formerly going to the road districts should be covered by each municipality into a special fund to be known as "road fund," and that the amounts so credited to these funds should be available only for the construction and repair of municipal roads outside of the urban portion of the municipalities.

Upon the treasurer of Porto Rico devolved the duty of winding up the affairs of these bodies. This was performed, and

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statistical tables are given in the report above mentioned showing the financial operations of the boards during the four years that they were in operation. From them it is found that during this period the boards received a total of $220,889.25, of which $45,892.24, or 20.78 per cent, went for salaries and office expenses. Commenting upon these figures the report said:

> Although this is a very high percentage, the record would not be so bad if the $162,672.44, which according to the books was expended on the actual work of road construction and maintenance, had been wisely and economically expended. It is the general testimony, however, that this money was in great part so inefficiently expended that a very inadequate return was obtained in the way of permanent improvements to the municipal roads of the island.

As regards police administration, all power in relation to this important branch of the public service has been taken out of the hands of the municipal authorities and vested in the insular government. In doing this, it is of course recognized that the municipalities have been shorn of one of the most important classes of duties usually pertaining to local government. The necessities of the case, however, rendered such action imperative. At the time of the organization of civil government in 1900, each of the municipalities had its own police force, and, in addition, there was an insular police force that had been established by the military government. The abuses committed by these local police bodies were so great that conditions were intolerable. To such an extent was the force in each municipality used by the *alcalde* as a weapon to favor the political party to which he belonged, and to oppose those of the opposite political faith, that it may almost be said that the lives and property of the latter were more endangered than protected by them. The spirit was so strong and deeply ingrained in the people that it was the natural and expected thing for those in authority to use all instruments in their power for political and personal ends, that it seemed hopeless to effect the reformation imperatively demanded without taking the whole service out of the domain of local politics

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and vesting it in the central government, where it could be administered in a non-political manner. This was recognized no less by the Porto-Rican than by the American officials. The first legislative assembly accordingly passed an act increasing materially the insular police force, providing more definitely for its organization and administration, abolishing the municipal police except in the six larger municipalities, and authorizing the governor to replace the police of those places with the insular police at any time when in his opinion such action was desirable. This power of the governor was speedily availed of, and in a comparatively short time the insular police force became the only one in the island. It is significant that in the case of the capital, San Juan, the substitution was made at the instance of the municipal council itself. Subsequent legislation has conferred upon the insular police force entire responsibility in respect to the policing of the island.

Very similar considerations have led to the concentration of practically all power relating to the administration of justice in a system of insular courts. It is true that provision is made for so-called municipal courts and justice of the peace courts. Notwithstanding the fact that the justices of the former are elected by the people, the courts are really insular courts, since all their expenses are paid by the insular government, and, as regards technical administration, they are under the authority of the attorney-general of Porto Rico. In the case of the justice of the peace courts, by an inconsistency that it is not easy to explain, all the expenses of the courts are paid by the municipalities, but the justices themselves hold office through appointment by the Governor and are thus insular officials. One of the judicial reforms contemplated for the future, and very much desired by the American members of the executive council, is the changing of these provisions so that municipal judges will be appointed by the governor instead of elected by popular vote, and the expenses of the justice of the peace courts will be made a charge upon the insular budget, to the end that all of the courts of the island—supreme, district, municipal and justice of the peace—will be integrated into one logical insular system. Among other advantages of such a change will be the

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possibility of emphasizing more strongly the judicial service as a career in which promotion can be made according to merit from the less to the more important posts. With the feeling on the part of the lower house of the legislature in reference to this matter, particularly as regards the substitution of appointive for elective officials, the prospects of securing this change in the immediate future are not very bright.

V

Turning now to the organization of the executive, the principle was unqualifiedly adopted, on the one hand, of stripping the chief executive officer—the *alcalde*—of all judicial and legislative functions other than those of exercising the usual power of recommending measures and of vetoing bills of which he disapproves,[1] and, on the other hand, of concentrating in his hands as far as possible entire responsibility and power in respect to the conduct of administrative affairs. The *alcalde* had already been shorn of all judicial power, and the new municipal law of 1902 took away from him the function of acting as president of the municipal council. Responsibility for the due conduct of affairs in the municipality is imposed upon him through the almost unlimited power that is vested in him to appoint and remove from office all administrative officials. He himself is the only administrative officer who is elected by the people: all the others, no matter what their importance, are appointed by him; the secretary, treasurer, comptroller and health officer, with the approval of the municipal council, and other employees on his sole discretion. Vested with full discretion to dismiss officials, he makes himself responsible if he fails to remove from office any employee who misconducts himself after the fact has been brought to his attention. This responsibility for the management of affairs is further emphasized by the important part, which will be elsewhere more fully commented upon, played by the *alcalde* in formulating and presenting to the council the annual budget setting forth estimated receipts,

[1] The usual provision exists whereby a bill may be passed over the *alcalde's* veto. To do this the affirmative vote of two-thirds of the entire membership of the council is required.

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taxes and license rates that in his opinion should be fixed; the rate of salaries that should be paid, and all expenses for which provision should be made for the coming fiscal year; and of subsequently passing upon such budget as may be adopted by the council.

This principle of organization was adopted not merely because in itself it was deemed to furnish the best guarantee of efficient administration, by making the office of *alcalde* one of such power and dignity as to attract men of influence and standing in the community, but because it lent itself more directly than any other method of organization to the establishment of a system of supervision and control over municipal affairs that was believed to be absolutely essential, at least in the transition period when ancient abuses were being eradicated and new standards of integrity and efficiency being inculcated. This point will be more fully discussed when we come to the consideration of the important point of the relations between the municipal and insular governments.

The *alcalde* is elected by the qualified voters of the district at the time when the other elections are held, and he holds office for a term of four years. His salary is fixed by the municipal council, but cannot exceed $2,500 in municipalities of the first class, $1,200 in municipalities of the second class, and $600 in municipalities of the third class. This, as well as all other salaries, must be fixed in the annual budget, and when so determined cannot be changed during the year. The law further provides that neither the *alcalde* nor any other municipal employee may receive any additional remuneration whatsoever from any municipal funds. These provisions are intended to prevent any possibility on the part of a council of attempting to reward or punish an official, for following or disregarding its wishes, by increasing or reducing his remuneration. The *alcalde* is forbidden to absent himself from the municipality for more than eight days without written permission of the municipal council. During his absence, or temporary disability, his office is filled by the person performing the duties of president of the municipal council. All permanent vacancies, whether resulting from death, resignation or dismissal, are filled by the governor,

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who, in making his appointments, must select a person of the same political faith as the party victorious at the last municipal election.

Before leaving the subject of the *alcalde* and his duties, mention should be made of the interesting and unusual power that he has to appoint persons to represent him in different parts of the district. The law thus provides that he may, if he so desires, appoint a "delegate" for each of the rural districts, or *barrios* as they are called, included within the municipal limits, and a "commissioner" for any small populated center, to represent him in the performance of his duties. The powers and duties of these officers are prescribed in each case by ordinance of the municipal council, but in no case may they include any power or duty not possessed by the *alcalde* or secretary. They serve without compensation, except that the commissioner may be compensated for keeping the civil register. This provision for facilitating the conduct of public affairs is one that was taken from the old municipal law in force in the time of Spanish rule, and it is consequently one with which the people are thoroughly familiar, and in practice has given excellent results.

The names of the other administrative officers—the secretary, treasurer, comptroller and health officer—have already been mentioned, and their designation gives a general idea of the nature of their offices. The salaries of these officers are fixed annually in the budget but cannot exceed the maximum provided in the general municipal law. It was in providing for these officers that the chief effort was made to make a distinction between the more important and less important municipalities. Municipalities of the first class, which include only the four districts of San Juan, Ponce, Mayaguez and Arecibo having the important towns of those names within their boundaries, are given the full complement of officers. In municipalities of the second class, which include about half of the remaining number, the offices of secretary and comptroller may, if the municipal council so determines, be combined in the same person, without any change in compensation, while in municipalities of the third class, the ones in which a real effort has to be made to provide for a very economical form of or-

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ganization, the secretary must also assume the duties of the comptroller, and the *alcalde* those of treasurer, unless the municipality has "fully paid all its budgetary obligations of preceding fiscal years and is able promptly to meet all of its financial obligations as they fall due," in which case the municipal council may, if it so desires, provide for the employment of an independent treasurer. In the case of all these officials the maximum salary that may be paid is fixed by the law for each of the three classes of municipalities. In the case of the secretary the maximum is $1,800, $1,200 and $600 respectively; in that of the comptroller, $2,000 and $1,000; and in that of the treasurer, $1,500 and $600 in classes one and two, the duties of these officers in class three being, as above described, performed by the secretary and *alcalde* respectively.

The only other administrative officers especially provided for by law are inspectors of health and charities, sanitary inspectors, and an inspector of public works. Each municipality must make provision for an inspector of health and charities, who shall have direct charge of all institutions and matters relating to the public health and care of the dependent classes, in so far as such work falls within the jurisdiction of the municipal authorities, and may make provision for deputy inspectors, and also for sanitary inspectors to the number of not exceeding one for each 10,000 of the population. The power to enact health ordinances is vested primarily in the insular superior board of health, with the approval of the executive council, but the municipalities may supplement such legislation with local ordinances in so far as they do not conflict with law or with such insular regulations.

It is the duty of these local health authorities to enforce both the insular and local health regulations, and to this end to coöperate in every way with the insular police who also have the same function. They act as physicians to the poor, food inspectors, inspectors of cattle to be slaughtered for food, besides attending to a variety of other matters having to do with the sanitation and administration of public charitable institutions. The munipal law as first enacted in 1902 made provision for a local unsalaried board of charities in each municipality to have general charge of charitable institutions. Nothing but confusion and

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division of authority resulted from this policy and the boards were accordingly abolished and all their functions conferred upon the inspector of health and charities. The failure of these boards to give good results furnished another example of the hopelessness of obtaining good government in Porto Rico through this form of organization, and of the argument in favor of vesting powers in the hands of special salaried officials who can be held to a rigid accountability for the manner in which they perform their duties.

VI

In the preceding pages we have attempted to describe the conditions as regards municipal government that prevailed in the island at the time of the American occupation, the defects, both of organization and of administration that then existed, and the general scheme of government that has been established with a view to correcting these evils. In this account we have refrained from other than incidental reference to what was probably the greatest problem that had to be met in working out the problem of reorganization; that, namely, of the relations that should exist between the new local governments and the insular government, and particularly the extent to which the latter should exercise supervision and authority over the former. We have done so because the question is so important and vital that it was believed desirable to postpone its consideration until the very last, in order that it might receive special treatment after the general features of the new system of government that has been enacted had been described. As the writer has elsewhere stated,[1]

> If the granting or withholding of political rights to the inhabitants of dependent territory and the determination of the exact relations that the government of such dependency shall have to the mother country are matters difficult of wise adjustment, the similar problems of the distribution of governmental powers between the central and local governments within a dependency, and the fixing of the measure of control of the former over the latter, are even more delicate of solution.

[1] Territories and Dependencies of the United States, *etc.*, preface, page x.

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Particularly is the foregoing true where, as in the case of the United States, the central feature of the whole colonial policy may be said to be the development of the powers of local self-government to the greatest extent possible.

Evidently the fundamental difficulty here to be met was to find a solution to the problem of making the largest possible grant of powers of self-government to the local authorities, and, at the same time, of doing it in such a way as to ensure that the powers thus conferred would be properly exercised, and that a reasonable degree of efficiency in the management of governmental affairs would be secured. Difficult in itself, the problem was rendered still harder of solution by the political situation. On the one hand the Porto-Ricans, through their representatives in the lower house of the legislature, were nearly a unit in demanding that the authority to be exercised by the central government should be restricted to the lowest possible degree. This attitude was assumed by them, not because, as a matter of political philosophy, they were genuine advocates of the policy of decentralization, but because final authority in the insular government was in the hands of the American appointees of the President, while the actual administration of local affairs, under whatever system might be established, would necessarily be in the hands of the Porto-Ricans. On the other hand, the Americans, while fully appreciating and sympathizing with the aspirations of the Porto-Rican people in this respect, believed that, for some time to come at least, it was absolutely essential that, in some way, authority should be retained in the central government to compel at least a minimum of efficiency, and promptly to punish such misconduct or dishonesty as might develop. Not until the Porto Ricans had been made, by practical experience, to appreciate, more fully than they had ever done in the past, the obligations of public office, was it believed that all control over their local governments could be surrendered.

All students of conditions as they existed at that time were unanimous in this opinion. General Davis, in his report so frequently cited, said: "This (the organization of local government), it seems to me, must be done under superior supervision,

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for to hastily abandon the island to local control unrestrained by superior powers would, or might, result in the greatest disaster." The first commission appointed by the President for the revision of the codes, and including a Porto Rican among their number, in discussing the same subject in its report,[1] said:

> In fact, great care must now be taken lest this extension (of political powers) be made too rapidly, resulting in the introduction of institutions for which the people are unprepared. Until the last years of Spanish rule the native element was denied participation in public affairs, and, therefore, lacked the political training which prepared the people of the United States for local self-government. In organizing the local institutions of the island this fact is of paramount importance. The experience of the first year of civil government has proved conclusively that without some form of central control local services are neglected or inadequately performed.

Notwithstanding the existence of these two apparently mutually contradictory principles of local self-government on the one hand, and adequate control from above on the other, and the further fact that the wishes of the two elements of the central government—the Porto Rican and American—were, at the outset, so diametrically opposed, there was nevertheless found a means by which the conflicting ideas were substantially harmonized. This was done by changing absolutely the principle upon which the relations between the local and the insular governments had in the past existed, and framing the new government upon a totally different theory. The old law was so framed as, not only to give to the central government the right to intervene at almost any point, but to make the securing of its prior consent or approval necessary before the municipal governments could take any action of importance. The requirement that municipal budgets, before they became effective, should be submitted to the insular authorities for approval is but one example of the extent to which this principle was carried. The central government, moreover, dominated affairs so completely, determining who should and who should not hold

[1] Report of the Commission to Revise and Compile the Laws of Porto Rico (House Doc. No. 52, 57th Congress, 1st session, 1900, 2 vols.).

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office, that, apart from any legal requirements, the municipal authorities always felt that the wishes of such government should in all cases be determined and followed. As the code commission, in its report, expressed it: [1]

> In the Spanish administration system as applied in Porto Rico the control of the insular authorities over the "municipios" (municipalities) was conferred in sweeping provisions which made it possible to reduce local government to a minimum. . . These and a number of other provisions . . . gave to the insular authorities complete control over local administration.

The new system of government established in 1902, as regards both its legal provisions and the spirit with which it has been administered, proceeds upon an essentially different theory. With the exception of a few cases, such as the incurring of bonded indebtedness, direct authority is conferred upon the municipal authorities to perform all of their functions without direction or intervention in any way on the part of the insular government. Such limitations on their powers as exist are plainly set forth in the municipal law itself and, for the most part, are not unlike those found in the general or special municipal laws of the American states. Such authority as is retained by the insular government is strictly of a supervisory and corrective character—the power to step in when necessary to prevent illegal action, punish fraud and correct municipal abuses.

This power on the part of the insular government to intervene, purely for the purpose of compelling proper conduct, finds expression in a number of provisions, some of which have already been mentioned. Among these the more important are: the power of the governor to remove *alcaldes* for cause and appoint their successors; the full power given to the governor and treasurer to examine into the manner in which the financial affairs of any municipality are being conducted; the duty of the governor to promulgate a budget in case a municipality fails for any reason to make this necessary provision for the due conduct of affairs during any fiscal year; the right of

[1] Report of the Commission to Revise and Compile the Laws of Porto Rico (House Doc. No. 52, 57th Congress, 1st Session, 1900, 2 vols.).

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the attorney-general, at the instance of any aggrieved party, or of the treasurer of Porto Rico, to compel by *mandamus* proceedings a delinquent municipality to make provision for the payment of any or all of its lawful obligations; the direct authorization given to any person residing within the limits of any municipality who believes himself injured by any ordinance or resolution or act of a municipal council, or of any municipal officer, or that any ordinance or resolution of a municipal council is prejudicial to the interests of the municipality, to object thereto by suit in a court of competent jurisdiction, and in case he is too poor to defray the expense of such an action, to apply to the attorney-general of Porto Rico who, if he believes the complaint is a just one, is required to take charge of such action in his behalf; the further power of the attorney-general himself, on his own initiative, to take cognizance of any such act and proceed as if formal complaint had been made to him; and, finally, the obligation imposed upon the governor of, in effect, putting the affairs of a municipality in the hands of a receiver when it becomes clear that it is unable to meet its current expenses and other obligations. This latter provision is of course intended only for extreme cases, as when some great disaster has occurred, and was inserted only as a matter of great precaution.

These powers are apparently exceedingly stringent and comprehensive. Two important considerations in relation to them should, however, be borne in mind. The first is that, broad as they are, they represent powers much more restricted than those originally conferred by the act of 1902. Thus, that act, instead of providing that any person believing himself to be aggrieved, or that the attorney-general believing that an injurious or illegal act had been committed, should seek relief by way of the courts, authorized direct appeal from any act of a municipal authority, whether illegal or merely unwise, to the secretary of Porto Rico who, in response to such petition, or upon the matter coming to his attention in any way, had full power to cancel such act. Only the most imperative need could justify the lodging of such large powers in an administrative officer. At the time it was believed to be necessary on account of the extent to

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which the practice prevailed of municipal officers using their power in an arbitrary way to favor themselves and friends, and to oppress their political opponents. Such, however, was the progress achieved in eliminating this practice, that, in the short space of four years, it was found possible to repeal the provision and substitute in its place the method of procedure by judicial process. In the same way it was found feasible to do away with the power originally granted to the secretary of Porto Rico to order the calling of a special session of a municipal council for the consideration of any particular matter. In still another direction the system has been greatly liberalized from the standpoint of local self-government. As originally passed in 1902, the municipal law provided that, in case any municipality failed, in the enactment of its annual budget, to make due provision for all outstanding obligations, its next budget should not become effective until it had been submitted to the treasurer of Porto Rico, who, thereupon, had full power to make such changes in the budget, either in the way of reducing or eliminating items of expenditure or in increasing dues, licenses or taxes, as, in his opinion, were necessary in order to meet the necessities of the case. In the revision of the act in 1906, this provision was dropped, and in its place was substituted the one authorizing the attorney-general to proceed by way of *mandamus* proceedings. Special mention is made of these changes at this place because they show how desirous the insular government has been to substitute judicial for administrative control and to broaden the powers of self-government as rapidly as experience indicates that this larger grant of power can safely be made.

The second point, which is one of even greater significance, is that these powers in all cases relate merely to the correction of evils and the furnishing of remedies against abuses, and in no case to the dictation in the first instance by the insular government of what shall be done by a municipality. They thus come into action only when a municipality itself has been at fault. The municipalities are thus, in effect, treated exactly as ordinary corporations. Within the limits of their charters they are allowed full freedom of action as long as they meet all of their legal obligations, but as soon as they default in any respect the

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state steps in, in the one case, by the intervention of the treasurer, and in the other by the appointment of a receiver under the authority of the courts, to manage the affairs of the defaulting corporation until all legal requirements have been fulfilled. The essential contrast between the old and new system thus lies in the fact that under the old system the insular government intervened in every case, whether the municipality had acted wisely or not, while under the new system such intervention takes place only in the event the municipalities fail to meet all of their legal obligations. For the first time, therefore, municipal officers are put in a position where they must feel a real responsibility, and the central government is relieved of much vexatious work while still retaining adequate power to intervene should the maintenance of public credit so require. How successfully this has worked in practice is to be seen in the great progress that has been achieved by the municipalities, not only in a material but also in a moral sense, and in the fact that today the only feature in respect to which any real demand for a change exists is that of having vacancies in the office of *alcalde* filled by the municipal councils, instead of through appointment by the governor,—a demand urged by political leaders in order to increase their powers, rather than by the voters themselves.

W. F. WILLOUGHBY.

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THE ATTORNEY-GENERAL AND THE CABINET[1]

OF all the great offices established by Congress in 1789, that of the attorney-general was in some respects the least satisfactory in its organization. The portion of the Judiciary Act devoted to the attorney-general's place is curiously brief. Its very brevity suggests the immaturity of the administrative-judicial system of the central government. Aside from his function as federal prosecutor, the attorney-general was to be legal adviser to the President and to the heads of departments. This arrangement brought him into the range of executive control, making him, like the secretaries, a ministerial officer of the chief magistrate.[2]

When, in 1790, Edmund Randolph, first of the attorneys-general, wrote of himself as "a sort of mongrel between the State and U. S.; called an officer of some rank under the latter, and yet thrust out to get a livelihood in the former. . . ."[3] he cast no doubtful reflection on the status and relation of his position. He knew that he was head of no department, and his salary of fifteen hundred dollars[4] was so small that probably he could not have been expected to support himself by it. He was obliged to trust to legal practice to eke out a living. There is no evidence to show that he was even expected to remain at the seat of government, though he was inevitably obliged to keep in touch with the President, at least by occasional correspondence. And, should the federal business warrant it, the President might summon him to a conference with the secretaries. That he was reckoned an adviser in legal matters by Washington from the start there is no doubt.[5]

[1] For two other articles by the present writer on certain historical features of the President's cabinet, the reader is referred to the *Yale Review* for August, 1906, and to *The American Political Science Review* for August, 1909.

[2] 1 Statutes at Large, 92. September 24, 1789.

[3] Conway, Omitted Chapters, in the Life and Papers of Edmund Randolph (1888), page 135.

[4] Provided by statute of September 23, 1789. 1 Statutes at Large, 72, sec. 1.

[5] Pickering quotes from memory, declaring that Washington said of Randolph: "I

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The place and functions of the attorney-general remained for many years after 1789 subjects of reflection on the part of thoughtful men. Several Presidents, beginning with James Madison, urged reform in the office, though apparently with no clear notions at first as to what measures of reform were needed. The attorneys-general themselves were helpful in the solution of the problem, none more so than William Wirt and Caleb Cushing. The problem became clearer under the stress of numerous circumstances in the growth and requirements of federal administration. By the close of the Civil War it was forced into the foreground; and Congress, in 1870, acting after long deliberation, established the office on a new footing, giving the attorney-general a place as head of the department of justice. The act of 1870, it may be added, made no change in law as to the duty of the attorney-general in giving official opinions.[1]

I

Before the outbreak of the war in 1812, Madison called attention to the accumulation of business in the various departments of the government, in particular in the war department, which was disproportionately burdened. This accumulation was due largely to the peculiar state of our foreign relations that for years had involved all the secretaries in exhausting labors. These relations had affected the entire administrative machinery of the federal government.[2] As a farewell word in his last annual message of December, 1816, Madison urged upon Congress the propriety of establishing an additional executive department, "to be charged with duties now overburdening other departments and with such as have not been annexed to any department. . ."[3] To another kindred matter he drew attention in these words:

made him . . . a member of my cabinet from the first." C. W. Upham, Life of Timothy Pickering, vol. iii, page 226.

[1] American and English Encyclopedia of Law, Compiled by Garland, McGehee and Cockcroft (2d ed. 1897), vol. iii, page 474, footnote 1.

[2] Messages and Papers of the Presidents, vol. i, page 499. Special message of April 20, 1812.

[3] *Ibid.*, vol. i, page 577, December 3.

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The course of experience recommends . . . . that the provision for the station of Attorney-General, whose residence at the seat of Government, official connections with it, and the management of the public business before the judiciary preclude an extensive participation in professional emoluments, be made more adequate to his services and his relinquishments, and that, with a view to his reasonable accommodation and to a proper depository of his official opinions and proceedings, there be included in the provision the usual appurtenances to a public office. . .[1]

Such reflections coming from one of the leaders in the Philadelphia Convention, who had since had much experience in administrative work, were not easily overlooked by several of his successors in the presidency. John Quincy Adams, Jackson and Polk all harked back to Madison's suggestion as to the position of the attorney-general.

The salary of the attorney-general, starting at fifteen hundred dollars in 1789, was doubled ten years later. But Congress thereafter was slow in increasing it. And it was not until 1853 that the salary was placed on a par with that of the secretaries and of the postmaster-general. By the appropriation act of that year—so far, at any rate, as salaries could mark unity and equality of office—the five secretaries, along with the postmaster-general and the attorney-general, stood together and in equal rank.[2]

In 1814 an attempt was made to enact a residence requirement. In January of that year a resolution was introduced into the House for the express purpose of inquiring into the expediency of "making it the duty of the Attorney-General of the United States to keep his office at the seat of Government during the session of Congress. . ."[3] Apparently the House regarded the attorney-general as the proper officer to aid it at times in respect to doubtful points of law. Following this resolution, a bill was prepared, presented and, after sundry altera-

[1] Messages and Papers of the President, i, pp. 577–78.

[2] Act of March 3, 1853.

[3] Annals of Congress, 1813–1814, 13th Cong., pp. 852–3. Date of resolution, January 5, 1814.

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tions, was passed by the House in April, but got no farther than a second reading in the Senate.[1]

That this bill met Madison's wishes, so far at least as its general principle was concerned, is probable.[2] But Madison was disturbed when he learned that his able attorney-general, William Pinkney of Maryland, was ready to resign because of the residence requirement likely to be enacted. Pinkney, in fact, did resign some months before the fate of the resolution was known,[3] for he was probably chiefly dependent on private practice in Baltimore, the city in which he resided. In accepting his resignation Madison wrote: "There may be instances where talents and services of peculiar value outweigh the consideration of constant residence; and I have felt all the force of this truth since I have had the pleasure of numbering you among the partners of my public trust. . ."[4]

When Pinkney's successor, Richard Rush, was appointed, Madison is said to have stipulated that during the sessions of Congress Rush should remain in Washington.[5]

II

William Wirt of Virginia accepted the post of attorney-general offered him by President Monroe late in October, 1817, with a clear understanding that there was nothing in the duties of his office to prevent him from carrying on general practice in Washington, where he took up his residence, or from attending occasional calls to Baltimore, Philadelphia or elsewhere, if time allowed.[6] He knew, however, that his first obligation was to Monroe and to the regular duties of his new position.

[1] Annals of Congress, *op. cit.*, pp. 766, 1114–5, 2023–2024. *Cf.* H. Adams, History of the United States, vol. vii, page 398.

[2] On January 29, 1814, Madison wrote to Pinkney: "On the first knowledge of the Bill, I was not unaware that the dilemma it imposes might deprive us of your associated services . . . I readily acknowledge that, in a general view, the object of the bill is not ineligible [sic] to the Executive. . ." Writings, (ed. Rives), vol. ii, page 581.

[3] January 25, 1814, according to Mosher, Executive Register, page 85.

[4] Madison's Writings, (ed. Rives), vol. ii, page 581.

[5] S. L. Southard, A Discourse on the Professional Character and Virtues of the late William Wirt (1834), page 33.

[6] J. P. Kennedy, Memoirs . . . of William Wirt, vol. ii, page 32.

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On the very day of his commission, November 13, he sketched on the fly-leaf of a record-book a simple plan which revealed his purpose of keeping careful records and of obtaining from the heads of departments who might consult him copies of all documents concerning which he might be asked for opinions.[1] Some months later, under date of March 27, 1818, Wirt addressed a letter to Hugh Nelson, chairman of the judiciary committee of the House of Representatives. In this letter he set forth what he conceived to be some defects of the law of 1789, the law establishing his office, and drew attention to such improvements as he hoped that congress might be induced to make. It was an illuminating, if not a constructive statement. It probably accomplished little, if any, change, for it never reached the House directly, but was filed away with other committee material, and gained publicity only in 1849, fifteen years after Wirt's death, when it was printed at length in the *Memoirs of the Life of William Wirt*, written by Wirt's friend, John Pendleton Kennedy. Then it attracted attention, especially among the members of the legal profession. Its substance merits consideration.[2]

Wirt began with an examination of the Judiciary Act of September 24, 1789. There the duties of the attorney-general were briefly set forth. They had not been more clearly elaborated in any later enactment. Wirt next sought for the records of opinions as given by his predecessors in the office—for letter-books, official correspondence and documentary evidence, but could not find a trace of these. Accordingly he concluded that there could have been neither consistency in the opinions nor uniformity in the practices of the attorneys-general. He indicated that in various ways he had discovered that his forerunners had been called on for opinions from many sources—committees of Congress, district attorneys, collectors of customs

[1] The original record is quoted by James S. Easby-Smith, The Department of Justice: Its History and Functions (1904), page 10.

[2] Kennedy, Memoirs of . . . Wirt (1st ed., 1849), vol. ii, pp. 61-65. *The Monthly Law Reporter*, December, 1850, pp. 373-379. This article reprints from Kennedy the Wirt letter of March 27, 1818, and comments thoughtfully on Kennedy's book, but makes several erroneous statements.

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and of public taxes, marshals and even courts-martial. Clearly these practices went far beyond the provisions of law. Resting on courtesy merely, they impressed Wirt as dangerous. His criticism took this form of statement:

> from the connection of the Attorney-General with the executive branch of the government . . . his advice and opinions, *given as Attorney-General*, will have an *official influence*, beyond, and independent of, whatever intrinsic merit they may possess: and whether it be sound policy to permit this officer or any other under the government, even on the application of others, to extend the influence of his office beyond the pale of law, and to cause it to be felt, where the laws have not contemplated that it should be felt is the point which I beg leave to submit. . .[1]

The conclusions which Wirt drew may be summarized. First, and above all things, provision should be made in law for keeping the records and preserving the documents of the office. This would make for consistency of opinions and uniformity of practices. Second, there should be a depository in the office of the attorney-general for the statutes of the various states, statutes which might be needed at short notice for aid in solving legal problems. In this matter Wirt was asking simply for a special library to facilitate his work. Finally, he suggested that legal restrictions be placed on the duties of the officer for the obvious reason that one man could not find time to perform the work if he were obliged to attend to such miscellaneous calls as had been made upon the time and energy of his predecessors. The experience of several months had already shown to him that "very little time is left to the Attorney-General to aid the salary of his office by individual engagements," a fact, he thought, which might account in part for the number of resignations which had occurred among his predecessors.[2]

This letter marks a new epoch in the history of the attorney-general's office. So far as the position of attorney-general

[1] Kennedy, *op. cit.*, vol. ii, page 64.

[2] *Ibid.*, page 64.

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could be vitalized and molded by Wirt, it was to be done. After his long occupancy (1817–1829) the attorney-generalship had certainly risen in importance and was considered as more closely allied to the whole executive administration than ever before. It cannot be said that Wirt's suggestions influenced directly congressional action, for there is no proof of such influence. But there was at last a man in the attorney-generalship with a few clear ideas on the subject of organization which he was ready to make effective. This, at any rate, Congress must have understood.

The details of administrative organization it is not the province of this paper to consider. It is enough to say that Wirt was provided by congress with a clerk in 1818 and a small sum of money ($500) for office-room and stationery. In response to criticism over inequalities in the salaries of the secretaries, these salaries were raised and equalized the next year (1819); and the salary of the attorney-general was increased to thirty-five hundred dollars. Other improvements of a minor character were made during his long term of service.[1]

Early in his term Wirt had intimated to the House that by the law creating his position he could not be reckoned legal counselor to that body.[2] When, in January, 1820, the House sent an order for his official opinion on a certain subject before them, he deliberately declined to give the opinion. This was his mode of reasoning:

> It is true that, in this case, I should have the sanction of the House . . . and it is not less true that my respect for the House impels me strongly to obey the order. The precedent, however, would not be less dangerous on account of the purity of the motives in which it

[1] Act of April 20, 1818, sec. 6. Annals of Congress, 15th Cong., 1st sess., vol. ii, p. 2566. Lowndes complained in the House April 20, 1818, of allowing "any longer the discrimination which had heretofore existed in the salaries of the Heads of Departments." *Ibid.*, vol. ii, 1779. In the following November, the subject of salaries came up in both Senate and House. The discussion led to the Act of February 20, 1819. Annals, 15th Cong., 2d sess. (1818–1819), vol. i, pp. 21 *et seq.*, vol. ii, page 2486. Easby-Smith, The Department of Justice, page 10, gives sundry details.

[2] House Documents, No. 68, 16th Cong., 1st sess., vol. v. "Letter from the Attorney-General . . . in reply to an Order of the House of Representatives," page 2. Dated February 3, 1820.

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originated. . . . I may be wrong in my view of the subject; the order may be sanctioned by former precedents; but my predecessors in office have left nothing for my guidance. . .[1]

He was no less explicit about his duty when, sought by the secretary of the navy a few months later for aid, he declared: "As my official duty is confined to the giving my opinion on questions of *law*, I consider myself as having nothing to do with the settlement of controverted questions of *fact*. . .[2]

A month after Wirt's death, on March 18, 1834, his friend, Samuel L. Southard—for some years his colleague in the cabinet—gave a public address in the hall of the House of Representatives at Washington on William Wirt's career. Speaking of Wirt's opinions as attorney-general, Southard said:

They all relate to matters of importance in the construction of the laws. . . . They will prevent much uncertainty in that office hereafter; afford one of the best collections of materials for writing the legal and constitutional history of our country; and remain a proud monument to his industry, learning and talents. . .[3]

It was seven years after Wirt's death (1841) that the first volume of the *Official Opinions of the Attorneys-General*, authorized by Congress, was issued. Similar collections have been compiled and printed at intervals ever since, and they constitute today a well-known and useful series. They amount to official justifications of the conduct of our Presidents.[4] In the first volume Wirt's opinions occupied over five-hundred pages in a total of 1471. Not one of his predecessors was represented by

[1] House Documents, *op. cit.*

[2] Opinions of the Attorneys-General, page 254. (House Ex. Doc., 26th Cong., 2d sess., Doc't No. 123.) Date of opinion, April 3, 1820.

[3] S. L. Southard, Discourse *etc.* (1834), page 36.

[4] House Ex. Doc., 26th Cong., 2d sess., Doc't No. 123. See in this connection an article, "Contrast between the Duties of the Attorney-General of the United States and those of the Law Officers of the British Crown," 38 *American Law Review*, November-December, 1904, pp. 924-925. In England the opinions of the law officers of the Crown are always held as confidential. It is believed by some lawyers that the withholding of these opinions amounts to a serious loss to the body of English jurisprudence. The subject was discussed in the House of Commons on April 26, 1901.

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much over thirty pages. The five men who came after him, occupying almost exactly eleven years (1829–1841)—equivalent in time to his single term of service—left on record 704 pages. Perhaps Wirt's admirable example of industry may have had something to do with the activity of his successors.[1]

In refusing to be led beyond the limits prescribed by law, Wirt doubtless contracted the action of his office. The restrictions thus placed upon it, however, made its relations clearer to Congress on the one hand and to the executive on the other. They tended inevitably to increase the usefulness of the attorney-general as a member of the cabinet.

III

As a result of the growth of the United States in population, of its development in commerce and wealth and of its ever-widening territory, the administrative work of the government had by 1830 increased enormously. The executive departments and the judiciary—confined, as they were for the most part, to their primitive organizations—were inadequately performing their functions. John Quincy Adams appreciated this fact, remarking on it in his first annual message.[2] Apparently, however, he could accomplish nothing toward remedying it.

[1] A comparison of the mere paging in the original volume of *Opinions, etc.*, edited by Henry D. Gilpin (Washington, 1841, Doc't No. 123), yields the following results:

1.	1789–1794: Edmund Randolph	14 pages.
2.	1794–1795: William Bradford	13 "
3.	1795–1801: Charles Lee	22 "
4.	1801–1804: Levi Lincoln	37 "
5.	1805–1807: J. Breckenridge	5 "
6.	1807–1811: C. A. Rodney	8 "
7.	1811–1814: W. Pinkney	5 "
8.	1814–1817: R. Rush	30 "
9.	1817–1829: W. Wirt	518 "
10.	1829–1831: J. M. Berrien	159 "
11.	1831–1833: R. B. Taney	86 "
12.	1833–1838: B. F. Butler	292 "
13.	1838–1839: Felix Grundy	82 "
14.	1840–1841: H. D. Gilpin	85 "

Appendix: pp. 1383–1471. Odd opinions not included in the above record.

[2] Richardson, Messages and Papers, vol. ii, pp. 314–15.

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When Jackson became President and referred to the need of attending to the business of reorganizing the attorney-general's office and of placing that officer "on the same footing in all respects as the heads of the other departments," he found a Congress ready to heed his suggestions. Originally, as has been shown, the office had left its incumbent ample time for private practice. By Jackson's day it was reckoned "one of daily duty." It was important to Jackson that the attorney-general should not be called away from the seat of government. With a fair increase in salary and a residence requirement, the officer could be charged with the general superintendence of the government's legal concerns.[1]

In the spring of 1830 a bill bearing on the subject was introduced into the Senate. Its objects were to reorganize the office of the attorney-general in such a way as to erect it into an executive department; to transfer to it from the state department the work of the patent office; to give to the attorney-general the superintendence of the collection of debts due the government; and to raise the salary of the attorney-general to six thousand dollars—exactly the salary then provided for each of the four secretaries. Such arrangements, it was argued, would do away with the need, at any rate for some time to come, of organizing a home department. The plan, it was assumed, would shut out the attorney-general from practice other than what he would be called on to conduct on behalf of the government in the supreme court. But the anomalous position of an attorney-general so burdened was at once apparent. In particular the plan seemed to ignore the essential fact that the attorney-general was primarily a law officer. And so it was easily defeated.[2]

Daniel Webster opposed this bill. He had no faith in the attempt thus to forestall a home department. Moreover, he wished the attorney-general still to continue in private practice without too much restriction. The old salary ($3,500) was relatively low for the position, but not too low, it was urged,

[1] Richardson, *op. cit.*, vol. ii, pp. 453 *et seq.*, pp. 527 *et seq.*

[2] Register of Debates (1829–1830), vol. vi, pt. i, pp. 276, 322 *et seq.*, 404.

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because the attorney-general "more than made up to himself the amount of compensation received by the others [*i. e.*, the heads of departments] who were confined to their offices. . ."[1] According to the views of one senator, to permit the attorney-general to engage in private practice was a legitimate and even a desirable way of aiding him in his equipment for performing well his official duties.[2]

Although the bill failed, through Webster's efforts a plan was finally matured, formulated and enacted into law whereby a new official, known as solicitor of the treasury, was created for the special purpose of aiding the attorney-general in suits pertaining to treasury claims. And for the additional responsibility involved in the new relationship, the salary of the attorney-general was raised to four thousand dollars—an amount at which it remained until 1853.[3]

That President Jackson was dissatisfied with such a compromise measure is clear enough from certain remarks in his second message of December 6, 1830. However useful in itself the provision for a solicitor of the treasury might be, it was not, according to the President,

> calculated to supersede the necessity of extending the duties and powers of the Attorney-General's Office. On the contrary, I am convinced that the public interest would be greatly promoted by giving to that officer the general superintendence of the various law agents of the Government, and of all law proceedings, whether civil or criminal, in which the United States may be interested, allowing him at the same time such a compensation as would enable him to devote his undivided attention to the public business. . .[4]

It is probable that Jackson never again expressed himself in print after 1830 regarding reform in the office of attorney-

[1] Register of Debates, *op. cit.*, p. 324.

[2] *Ibid.*, p. 323.

[3] 4 Statutes at Large, ch. cliii, sec. 10. "*And be it further enacted*, That it shall be the duty of the attorney general . . . at the request of said solicitor, to advise with and direct the said solicitor as to the manner of conducting the suits, proceedings, and prosecutions aforesaid; and the attorney general shall receive in addition to his present salary, the sum of five hundred dollars per annum." May 29, 1830.

[4] Richardson, Messages and Papers, vol. ii, page 527.

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general. After Jackson, no president before Polk undertook to do so.

Polk argued in a vein similar to that which Jackson had made familiar. He, too, wished to increase the duties and responsibilities of the officer, and recommended that he be placed on the same footing as the heads of departments, for "his residence and constant attention at the seat of Government are required. . ."[1] Even then Congress took no action in the matter for several years. Whatever projects of reform there may have been, they were doubtless seriously interfered with by the war with Mexico.

There is a curiously interesting paragraph in this connection occurring in a circular letter addressed by Polk, under date of February 17, 1845, to all the men to whom he extended invitations to become his cabinet associates. He wrote:

> I disapprove the practice which has sometimes prevailed, of Cabinet officers absenting themselves for long intervals of time from the seat of government, and leaving the management of their Departments to chief clerks, or other less responsible persons than themselves. I expect myself to remain constantly at Washington, unless it may be that no public duty requires my presence, when I may be occasionally absent, but then only for a short time. It is by conforming to this rule that the President and his Cabinet can have any assurance that abuses will be prevented, and that the subordinate executive officers connected with them respectively will faithfully perform their duty. . .[2]

It may be assumed that Polk exacted this significant condition from his first attorney-general, John Y. Mason of Virginia. But the attorney-generalship under Polk had two other occupants, Nathan Clifford of Maine and Isaac Toucey of Connecticut.[3] I am aware of no evidence that would make it possible to say, in respect to this office alone, how far the condition was really fulfilled. So far as Polk could establish the custom of holding his cabinet associates in Washington he doubtless did so.

[1] Richardson, *ibid.*, vol. iv, page 415.

[2] The Works of James Buchanan, ed. John Bassett Moore (1909), vol. vi, pp. 110–111.

[3] Mosher, page 138.

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IV

There is ground for believing that Caleb Cushing was the first attorney-general of the United States who held himself strictly to the residence obligation and refrained from the general practice of law.

Coming into office in March, 1853, just after the salary of the attorney-general had been raised to eight thousand dollars, Cushing at the start was placed, in respect to salary, on an equality with his cabinet associates, and accordingly had no very valid reason for entering into private practice in or outside of Washington. Like the other cabinet associates of Pierce, Cushing kept his place throughout the four years' term. He left behind him a collection of official opinions that for extent alone has never, before or since his day, been equalled. They fill three in the series of volumes known as *Official Opinions*, twenty-six of which have thus far (1909) been issued.[1] It may be doubted whether Pierce had an abler associate among his advisers than Cushing, though Jefferson Davis was secretary of war and William L. Marcy was at the head of the state department. Certainly there was no more trusted man in the cabinet. Pierce held him in the highest regard. That he was of real assistance in keeping the cabinet together is a matter of authentic history.[2]

Cushing left to posterity quite the most careful considerations on the historic development of the attorney-generalship up to his time. These have been occasionally quoted since they were written. They probably did something to help establish the attorney-general as head of the department of justice in 1870. That Cushing perceived the need of some such organization is clear. Like Wirt, Cushing determined to understand the structure and functions of his office, so far as the laws and the practices of his predecessors could reveal them. Instead of presenting his conclusions—as Wirt had done—to

[1] Cushing's opinions fill vols. v, vi, vii, covering over 2000 pages.

[2] Memorial of Caleb Cushing (Newburyport, 1879), pp. 169 *et seq.* Vol. 7 Opinions of Attorneys-General, pp. 453–482. The Memorial gives various useful clues to Cushing's career. There is no biography of Cushing yet written.

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the chairman of a committee of Congress, he offered them to the President. They were written under date of March 8, 1854, at the end of his first year's experience. With the technical portions of the "opinion" relating to the attorney-general and the courts, this investigation is not concerned. There are, however, some reflections which throw light on the relation of the office to the executive.[1]

According to the original theory of the office, the attorney-general was prompted if not actually authorized to engage in private practice of the law. This custom in the case of the English attorney-general—from whose office it is probable that we drew some of the features of the American office—was well established in 1789. But the English attorney-general was not then a member of the cabinet, nor is he so today.[2]

Cushing doubted the expediency of allowing the head of a department "under any circumstances" to continue in the practice of the law. That such a custom might once have been justifiable, he was willing to admit. As he expressed his thought—

> Formerly, in an age of simple manners, when the public expenditures were less, the number of places less, the population of the country less, the frequentation of the capital less, the ingenuity of self-interest less . . . . a secretary, eminent in the legal profession might, without the possibility of reproach or suspicion of evil, take charge of private suits or interests at the seat of government. He may do so now, perhaps; but that is not so clear as it formerly was; and it is not easy to perceive any distinction in this between what befits one and another head of department. . . . However all these things may be, the actual in-

[1] The considerations of Cushing were published in vol. 6 Opinions of the Attorneys-General, pp. 326–355. They appeared also in *The American Law Register* (December, 1856), vol. v, pp. 65–94. I have found the latter volume most convenient to use.

[2] *American Law Register*, vol. v. Anson, Law and Custom, pt. ii, page 92. The Crown (2d ed., 1896), pp. 201–202. In 1818 the absence of the English attorney-general from the cabinet impressed Richard Rush as strange and worthy of remark. He said that "in the complicated and daily workings of the machine of free government throughout a vast empire, I could still see room for the constant presence of the attorney-general in the cabinet." Memoranda of a Residence at the Court of London (2d ed., Phila., 1833), page 63.

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cumbent of this office. . . experiences that its necessary duties are quite sufficient to task to the utmost all the faculties of one man; and he willingly regards those recent acts, which have at length placed the salary of his office on equal footing with other public offices of the same class, as intimation at least that the Government has the same precise claim on his services, in time and degree, as on those of the Secretary of State or the Secretary of the Treasury. . .[1]

From this passage it is clear that Cushing considered himself not only as the peer of his cabinet associates, but as in some sense head of a department, though he occupied what was technically known as an "office." It was to this conception of his position to which General Benjamin F. Butler of Massachusetts referred when, in 1879, Butler paid a tribute to Cushing, remarking that Caleb Cushing "raised the office of Attorney-General, and organized it to be in truth and in fact a department of the Government. . ."[2] At any rate, many of Cushing's suggestions toward a better organization of the work of the attorney-general were enacted into the laws between March, 1854—the date of his "opinion"—and June, 1870, when the attorney-general was named in the law as head of the department of justice.[3]

Cushing was clear regarding the real reason for the existence of the cabinet. It was a means of attaining unity in executive decision and action. As he remarked, this unity "cannot be obtained by means of a plurality of persons wholly independent of one another, without corporate conjunction, and released from subjection to one determining will. . ."[4] With reference to the principal officers, he wrote that—

the established sense of the subordination of all of them to the President has . . . . come to exist, partly by construction of the constitutional duty of the President to take care that the laws be faithfully

[1] *American Law Register*, vol. v, page 93.

[2] Memorial of Caleb Cushing (1879), page 169.

[3] Easby-Smith, The Department of Justice (1904), pp. 15–16.

[4] *American Law Register*, vol. v, page 81.- Cushing devoted one opinion to the subject of the "Relation of the President to the Executive Departments," Aug. 31, 1855. Vol. 7 Opinions of the Attorneys-General, pp. 453–482.

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executed, and his consequent necessary relation to the heads of departments, and partly by deduction from the analogies of statutes. . .[1]

Cushing's usefulness to Pierce, his talents, his learning and his persistent industry—all these matters need not make the student overlook certain weaknesses of which his contemporaries were aware. Mr. J. F. Rhodes has called attention to the fact that Lowell satirized Cushing as early as 1847 for his lack of consistency and principle in politics.[2] Rhodes likewise cites Thomas H. Benton's criticism of him in a speech of July 21, 1856. In his speech, Benton acknowledged that he was the "master-spirit" of Pierce's cabinet, but he regarded him as "unscrupulous, double-sexed, double-gendered, and hermaphroditic in politics, with a hinge in his knee, which he often crooks, that thrift may follow fawning. He governs by subserviency. . ."[3] In brief, Cushing never could win completely the trust of his fellows. Yet he proved a very useful statesman. Both Buchanan and Grant at different times sought his aid. He was among the legal experts chosen as counsel to aid in the Geneva Tribunal. Grant named him as chief justice of the supreme court, but was induced to withdraw his name from the Senate.

It seems fair to conclude that during a long life, extending from 1800 to January, 1879, in no task did Caleb Cushing prove more useful than in that of the attorney-generalship. He was the ablest organizer that the office had had since its establishment in 1789.[4]

[1] *American Law Register*, vol. v, page 71.

[2] Rhodes, History of the United States since the Compromise of 1850 (1892 *et seq.*), vol. i, page 392. Lowell's satire is quoted by Rhodes from the *Biglow Papers* as follows:

> Gineral C. is a dreffle smart man:
> He's ben on all sides thet give places or pelf;
> But consistency still wuz a part of his plan,—
> He's ben true to *one* party—an' thet is himself. . .

The Writings of James Russell Lowell (Boston, 1890), vol. viii, page 66.

[3] Quoted from Von Holst, History of the United States, vol. iv, 263, note.

[4] For the general facts of Cushing's career, I have relied somewhat on Rhodes (History, *etc.*, especially vols. i, pp. 388 *et seq.*; iii, pp. 192, 201, 521; vi, pp. 364–365; vii, pp. 27–28) and on the material in the Memorial (1879). The generalization is based upon this, taken into connection with the evidence revealed in his three volumes of Opinions heretofore cited.

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V

The Civil War brought great pressure of work on the office of the attorney-general. By that period an administrative-judicial organization had grown up that proved under the new circumstances distinctly out of joint. Various legal officers in the separate departments gave opinions to the secretaries or heads that were at times inconsistent with, if not actually opposed to, those of the attorney-general. Many tasks were duplicated. In brief, there was no definite provision in law which unified and brought to one master mind the direction of the legal work of the government. As a consequence that work lacked symmetry and consistency.

The four chief law-officers in 1861—with the dates of their separate establishments—were the attorney-general (1789), the assistant attorney-general (1859), the solicitor of the court of claims (1855) and the solicitor of the treasury (1830)—the latter a rather anomalous official in the treasury department who, for certain purposes, was under the direction of the attorney-general. Subordinate to these and controlled by the attorney-general from 1861 was a corps of scattered district attorneys.[1] The whole organization was loosely knit and disjointed. As was truly said, the law business of the government during the war period "greatly outgrew the capacity of the persons authorized to transact it and the number of outside counsel . . . appointed subsequently to 1861 was greater than all the commissioned law officers of the Government in every part of the country. . . ."[2]

The cost of this extra counsel was large, how large it would probably be impossible with even a fair degree of accuracy to say. Figures were brought forward in Congress to show that nearly half a million dollars ($475,190.42) could be thus accounted for during a portion of the years from 1861 to 1867. More than half that amount ($258,018.44), it was said, went

[1] These facts can be gathered from Easby-Smith, The Department of Justice, pp. 16, 28–30. They are commented upon in the debates on the plan of a new organization, 1867–1870, in Congress. See especially *Congressional Globe*, 41st Cong., 2d sess., pt. iv, p. 3035 (April 27, 1870).

[2] *Congressional Globe*, 41st Cong., 2d sess., pt. iv, page 3035.

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for extra legal counsel in the two years 1868–1869. To William M. Evarts alone, fees for occasional legal aid to the government amounted, by 1867, to approximately fifty thousand dollars ($47,545.86). That the government was called on to pay a hundred thousand dollars annually during the decade 1860–1870 is a statement probably well within the range of truth. This was a significant fact, and it helped to direct attention to numerous administrative weaknesses in the federal organization.[1]

The heritage of war expenditures assumed such ominous proportions that, in 1867, with a view to economy, Congress appointed a so-called Joint Committee on Retrenchments. This committee, aided perhaps by certain recommendations concerning the reorganization of the office by Attorney-General Henry Stanbery set forth by him in December of that year, was attracted to an investigation of the legal work of the government.[2]

For more than two years following, the subject of reorganizing the law administration remained in the background of public discussion. It was lost to sight largely because of subjects of a more pressing and sensational nature. It matured slowly, however, and came up for occasional discussion or report during the sessions of the thirty-ninth, fortieth and forty-first congresses. Finally, after a vigorous effort in the spring of 1870—an effort admirably directed in the House of Representatives by Thomas A. Jenckes of Rhode Island—a measure was enacted on June 22, 1870, which President Grant approved, and which erected the office of the attorney-general into the department of justice.[3]

[1] *Congressional Globe*, 41st Cong., 2d sess., pt. iv, pp. 3035 *et seq.* Jenckes of Rhode Island, speaking of the final bill for a Department of Justice, said in the House (April 27, 1870): "The special reason why they [*i. e.*, the committee] have reported it earlier than any other relating to the organization of the Departments is the great expense the Government have been put to in the conduct of the numerous litigations involving titles to property worth millions of dollars, rights to personal liberty, and all the numerous litigations which can arise under the law of war."

[2] *Ibid.*, page 3039. Easby-Smith, *op. cit.*, page 17.

[3] The best outline of the course of Congress at various stages of the attempt to reorganize the legal work of the government is to be found in the *Congressional Globe*,

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Inasmuch as the chief purpose of this article is to reveal the historic features of the attorney-generalship which throw light on the relations of the attorney-general as a more or less efficient adviser and assistant to the President and his cabinet associates, the act of 1870, apart from its more technical details, has a peculiar interest, for it was a mature and honest effort to realize an ideal with respect to the attorney-general that had been occasionally formulated since Andrew Jackson's day. It placed the attorney-general at last upon "precisely . . . the same footing as the other heads of Departments."[1] He became in fact the chief law officer of the government. The act created no new department. Much legal business in the other departments, hitherto scattered and at loose ends, was transferred, and so transformed the old office of the attorney-general into a symmetrical organization.

A chief object of the act of 1870 was to make it possible to create a staff sufficiently large to transact the law business of the government in all parts of the country. If assistant counsel were employed, these extra men were to be designated either as assistant district attorneys or as assistants to the attorney-general; and so, holding commissions as such, they could be made strictly responsible to the attorney-general for the performance of duties.[2]

During the development of administrative and legal work, law officers had been provided in the various executive departments from time to time as they were needed. As was re-

41st Cong., 2d sess., pt. iv, page 3039. The list of dates there given makes it easy for the investigator to trace back special points and proceedings to December 12, 1867, at which time Lawrence of Ohio offered a resolution looking toward a consolidation of all the law officers of the government at Washington into one department. That resolution marked the beginning of legislative effort. For the statute of June 22, 1870, see 16 Statutes at Large, pp. 162–165.

[1] *Congressional Globe*, p. 3067 (April 28, 1870). In connection with this quotation from Lawrence, his general remarks on the cabinet are worth noting. He said: "The Cabinet is the creature of usage only. But since the establishment of the office of Attorney-General the Attorney-General has been a member of the Cabinet by usage just as much as any head of a Department. He ought to be in the Cabinet. There ought not to be a Cabinet without a law officer . . . "

[2] *Ibid.*, page 3035.

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marked by one of the speakers in the House of Representatives:

> Following the precedent set in the creation of the Solicitor of the Treasury by the act of 1830, we have authorized the appointment of an assistant Solicitor of the Treasury, and also a Solicitor of the Internal Revenue; and during the war we had a Solicitor of the War Department and an assistant Solicitor of the War Department . . . We also created a law officer for the Navy Department, and in the course of time a law officer has been created for the Post-Office Department . . . .[1]

Such facts revealed at once the possibilities of contradictory opinions arising from the various legal officers and the consequent confusion.

In what way this confusion might affect the attorney-general under the old régime, and so the President, may be seen from another passage in the debates of 1870. The President, it was declared, takes the opinions of the heads of departments,

> yet, as the law now stands, it is perfectly apparent that the law officers of the several Departments may advise the heads of Departments in one way upon subjects of public importance affecting their Departments and the Attorney-General may advise the President and the Cabinet, when they are assembled, in a totally different way upon the same subject. Now . . . it is utterly impossible that the President can intelligently advise Congress or act without embarrassment on affairs relating to our international rights, obligations and duties when there is a law officer in the State Department, as now, advising the head of that Department in one way while the Attorney-General may be advising the President in a different way . . . We have an officer called an examiner of claims, the law officer of the State Department, advising the Secretary of State in matters affecting our foreign relations, our duties and obligations, while the President and Cabinet are receiving advice from the Attorney-General . . . .[2]

In 1870 the various solicitors were transferred from the departments where they had been located and placed under the ultimate control of the attorney-general. Whatever official

[1] *Congressional Globe*, page 3036.

[2] *Ibid.*, page 3065.

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opinions they were called upon to give must henceforth be recorded in the office of the attorney-general. There, before they could become the executive law for inferior officials, these opinions were stamped with the attorney-general's final approval. As Representative Jenckes remarked: "It is for the purpose of having a unity of decision, a unity of jurisprudence, if I may use that expression, in the executive law of the United States, that this bill proposes that all the law officers therein provided for shall be subordinate to one head. . ."[1]

The act of 1870 was, according to the characterization of James A. Garfield, "substantive legislation."[2] There was comparatively little opposition to it in congress, for it was easily seen that it placed the government's law work on an admirable working basis.

VI

After 1870 there is but one matter to be touched upon, a matter of consequence as throwing light on the recognized status of the attorney-general. By an act approved on January 19, 1886,[3] the attorney-general was definitely reckoned as fourth in the line of possible succession to the Presidency, in case of the removal, death, resignation or inability of President and Vice-President. The act was due largely to the persistent efforts of Senator George F. Hoar of Massachusetts. The occasion of these efforts was the conviction in the public mind, which had been aroused by the attempt in July, 1881, to kill President Garfield, of the grave and serious necessity of placing new safeguards about the life of the chief magistrate.[4]

The original law of March, 1792, which provided for the succession to the Presidency, had declared that, in case of

[1] *Congressional Globe*, page 3036. It may be noted that there was one new officer of large importance created by the act of 1870—the solicitor-general of the United States. It was proposed to have in this new position "a man of sufficient learning, ability and experience that he can be sent to New Orleans or to New York, or into any court wherever the Government has any interest in litigation, and there present the case of the United States as it should be presented. . ." Page 3035.

[2] *Ibid.*, page 3037.

[3] 2 Statutes at Large, 1.

[4] *Congressional Record*, 49th Cong., 1st sess., December 15, 1885, page 181.

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vacancy, "the President of the Senate *pro tempore*, and in case there shall be no President of the Senate, then the Speaker of the House of Representatives, for the time being, shall act as President of the United States, until the disability be removed, or a President shall be elected."[1] Even at the epoch of its formulation, the principle underlying this language was not deemed satisfactory by such men as Madison, Gouverneur Morris, Livermore and Fitzsimons. There were suggestions at the time that it might be wiser to call on the Chief Justice or the secretary of state. But the Senate, having originated the form of statement, were unwilling to yield; and so it was at length adopted and went into the statute-book.[2]

The subject of the succession was next brought to public notice in June, 1856, by Senator John J. Crittenden of Kentucky. Crittenden had become impressed by the fact that from the fourth of March to the first of December in every second year there was no Speaker of the House. He presented a resolution to the Senate which called on the judiciary committee of that body to examine the subject and make a report. On August 5 following, a report—familiarly known as the "Butler Report," from Senator Butler of South Carolina, chairman—was read to the Senate. The Report concluded with a carefully formulated bill. The bill was never acted upon. The report, buried in a volume of Senate documents, was lost sight of and forgotten for many years.[3]

The Butler Report attempted to supplement the old law of 1792. On the assumption that there was no President of the Senate *pro tempore* or Speaker of the House, it recommended:

[1] 1 Statutes at Large, 240. The entire act is quoted by E. Stanwood, A History of the Presidency (1898), pp. 36 *et seq.*

[2] Madison and Morris objected late in the Convention of 1787 (August 27). See W. M. Meigs, The Growth of the Constitution (2d ed,. 1900), pp. 211 *et seq.* The course of the debate can be followed in the *Annals of Congress*, especially under dates of December 20, 1790, Jauuary 10, 13, October 24, November 15, 23, 30, December 1, 21, 1791, *etc.*

[3] *Congressional Globe*, 1855–1856, 1st sess., 34th Cong., pt. ii, pp. 1476, 1930–1, 2020. For Butler Report, see Senate Documents, 1855–1856, ii, no. 260, page 7. There is no reference to this matter in Mrs. Chapman Coleman, Life of John J. Crittenden *etc.* (2 vols., 1871).

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"that the duties prescribed by act of Congress shall devolve on the following officers: first, on the chief justice, when he has not participated in the trial of the President; and next, on the justices of the Supreme Court, according to the date of their commissions. . . ."[1]

This was the single constructive recommendation. It is, however, noteworthy that the authors first of all stated their belief that the members of the cabinet "in some prescribed order" were

> the proper functionaries to fill the vacancy. In cases of death they would be the persons most fit for the occasion. There are other circumstances, however, which would make the cabinet officers unfit to occupy the place of the President. In case of his impeachment for high political offences, the cabinet might be implicated, as *participes criminis*, and ought not to be in position of allies . . .

Moreover, the question as to whether the cabinet could be considered official after the official functions of the President—their principal—had terminated or were suspended, was puzzling to the committee and was left unanswered.[2]

Within a week of the shooting of Garfield, the Butler Report was referred to in public discussions over the possible consequences of the tragedy. In particular Senator Beck of Kentucky wrote of it in a letter to the Louisville *Courier-Journal*.[3] In the following autumn—Garfield having died on September 19—it happened that the country was without either a President of the Senate or a Speaker of the House. Should President Arthur die, there would be no legal provision for a successor. Statesmen were alarmed. Efforts to remedy the law were begun as soon as Congress assembled in December, and they continued at intervals during three successive congresses, the forty-seventh, the forty-eighth and the forty-ninth. Senator Hoar's persistency was finally rewarded in 1886.[4]

[1] Butler Report, page 5.

[2] *Ibid.*, pp. 4–5.

[3] Beck-Murphy correspondence (July, 1881), given in *Congressional Record*, December 16, 1885.

[4] *Ibid.*, Dec. 16. See especially Senator Maxey's remarks.

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Introducing the subject of succession in the last stage of his effort, Senator Hoar remarked that one of the important alterations in the existing law, that of 1792, was the substitution of—

members of the Cabinet in the order of their official seniority—the order in which the various Departments were created, except that the head of the Department of Justice, which is the last Department created by law, is continued in his old place as Attorney-General, ranking the heads of the Departments created since the original establishment of the Cabinet . . . .[1]

Thus the attorney-general, considered as a cabinet-associate of the President from 1789, was once more acknowledged as a peer among his colleagues—a position that he had in reality held since 1853.

HENRY BARRETT LEARNED.

NEW HAVEN, CONN.

[1] The discussion of the bill may be followed in the *Congressional Record*, December 15, 1885–January 19, 1886. Senator Hoar prints the bill as enacted in his Autobiography of Seventy Years (1903), vol. ii, pp. 170–1. He there says: "I drew and introduced the existing law" (page 170). It is interesting to note that Senator Hoar got the substance of the bill from a speech made in the House of Representatives sometime between 1873–1875 by his brother, Ebenezer R. Hoar, first attorney-general under Grant (1869–1870). I have not been able to discover this speech. *Congressional Record*, December 16, 1885, p. 215.

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HORACE GREELEY AND THE WORKING CLASS ORIGINS OF THE REPUBLICAN PARTY

THE French are a nation of philosophers. Starting with a theory of the rights of man, they build up a logical system. Then a revolution, and the theory goes into practice. Next a *coup d'état*, an emperor.

The English are a nation without too much philosophy or logic. They piece out their constitution at the spot where it becomes tight, and their nobility gracefully gives up its ancient privileges in exchange for land values. They are practical, opportunist, unlogical.

The Americans are French in their logic and English in their use of logic. They announce the universal rights of man and then enact into law enough to augment the rights of property. They have had in their history three great periods of this philosophizing on innate and inalienable rights: the period of the constitution, the decade of the forties, and to-day.

The forties far outran the other periods in its unbounded loquacity. The columns of advertisements in a newspaper might announce on Monday night a meeting of the anti-slavery society; Tuesday night, the temperance society; Wednesday night, the Graham bread society; Thursday night, a phrenological lecture; Friday night, an address against capital punishment; Saturday night, the "Association for Universal Reform." Then there were all the missionary societies, the woman's rights societies, the society for the diffusion of bloomers, the séances of spiritualists, the "associationists," the land reformers—a medley of movements that found the week too short. Thirty colonies of idealists, like the Brook Farm philosophers, went off by themselves to solve the problem of social existence in a big family called a Phalanx. The Mormons gathered themselves together to reconstitute the ten lost tribes. Robert Owen expounded communism to a joint session of the United States Senate and House of Representatives. It was the golden age

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of the talk-fest, the lyceum, the brotherhood of man—the "hot air" period of American history.

Fifty years before had been an age of talk. Thomas Jefferson and Thomas Paine had filled the young nation's brain with the inalienable rights of life, liberty and the pursuit of happiness. This second era of talk had also its prophet. Horace Greeley was to the social revolution of the forties what Thomas Jefferson was to the political revolution of 1800. He was the *Tribune* of the People, the spokesman of their discontent, the champion of their nostrums. He drew the line only at spirit rappings and free love.

This national palaver was partially checked by the fugitive slave law of 1850. The spectacle of slave-drivers, slave rescues and federal marshals at men's doors turned discussion into amazement. The palaver stopped short in 1854 with the Kansas-Nebraska bill. That law marked off those territories for a free fight for land between slave-owners and small farmers. On this land issue the Republican party suddenly appeared. Its members came together by a magic attraction, as crystals appear in a chilled solution. Not one man nor one set of men formed the party, though there are many claimants for the honor of first suggesting the name or calling the first meeting that used the name. The fluid solution was there, and when the chill came the crystals formed. It was the fifteen years of revolutionary talk that made the party possible. Men's minds had been unsettled. Visions of a new moral world had come down upon them. Tradition had lost its hold and transition its terrors.

We hear much nowadays of the "economic interpretation of history." Human life is viewed as a struggle to get a living and to get rich. The selfishness of men hustling for food, clothing, shelter and wealth determines their religion, their politics, their form of government, their family life, their ideals. Thus economic evolution produces religious, political, domestic, philosophical evolution. All this we may partly concede. But certainly there is something more in history than a blind surge. Men act together because they see together and believe together. An inspiring idea, as well as care for the

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next meal, makes history. It is when such an idea coincides with an economic want, and the two corroborate each other, that the mass of men begins to move. The crystals then begin to form; evolution quickens into revolution; history reaches one of its crises.

For ideas, like methods of getting a living, have their evolution. The struggle for existence, the elimination of the unfit, the survival of the fit, control these airy exhalations from the mind of man as they control the more substantial framework of his existence. The great man is the man in whose brain the struggling ideas of the age fight for supremacy until the survivors come out adapted to the economic struggle of the time. Judged by this test, Horace Greeley was the prophet of the most momentous period of our history. The evolution of his ideas is the idealistic interpretation of our history.

Greeley's life was itself a struggle through all the economic oppressions of his time. In his boyhood his father had been reduced by the panic of 1819 from the position of small farmer to that of day laborer. The son became an apprentice in a printing office, then a tramp printer, and when he drifted into New York in 1831 he found himself in the midst of the first workingmen's political party with its first conscious struggle in America for the rights of labor.[1] Pushing upwards as publisher and editor, the panic of 1837 brought him down near to bankruptcy, but the poverty of the wage-earners about him oppressed him more than his own. "We do not want alms," he heard them say; "we are not beggars; we hate to sit here day by day idle and useless; help us to work—we want no other help; why is it that we can have nothing to do?"[2] Revolting against this "social anarchy," as he called it, he espoused socialism and preached protectionism. This was the beginning of his "isms." Not that he had been immune before to cranky notions. When only a boy of thirteen he broke away from the unanimous custom of all classes, ages and both sexes by resolv-

[1] "The Workingmen's Party of New York City," 1829–1831. POLITICAL SCIENCE QUARTERLY, vol. xxii (September, 1907), p. 401.

[2] Recollections of a Busy Life, p. 145.

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ing never again to drink whiskey.[1] When "Doctor" Graham proclaimed vegetarianism in 1831 he forthwith became an inmate of a Graham boarding-house.[2] But these were personal "isms." They bothered nobody else. Not until the long years of industrial suffering that began in 1837 did his "isms" become gospels and his panaceas propaganda. His total abstinence of 1824 became prohibitory legislation in 1850. His vegetarianism of the thirties became abolition of capital punishment in the forties. The crank became the reformer, when once the misery and helplessness of the workers cried aloud to him.

Greeley's "isms" are usually looked upon as the amiable weaknesses of genius. They were really the necessary inquiries and experiments of the beginnings of constructive democracy. Political democracy theretofore had been negative. Thomas Jefferson and Andrew Jackson needed no creative genius to assert equal rights. They needed only to break down special privilege by widening the rights that already existed. Jefferson could frame a bill of rights, but he could not construct a constitution. Jackson could kill a "monster" bank, but he could not invent a people's control of the currency. Negative democracy in 1776, in 1800, in 1832 had triumphed. It had done its needful work, but its day was ended when a thousand wild-cat banks scrambled into the bed of the departed monster. Political democracy went bankrupt when the industrial bankruptcy of 1837 exposed its incapacity. It had vindicated equal rights, but where was the bread and butter? The call of the time was for a new democracy—one that should be social and economic rather than political, constructive rather than negative; whose motto should be *reform*, not repeal; *take hold*, not let alone.

But there were no examples or precedents of such a democracy. The inventor of a sewing machine or the discoverer of a useful chemical compound endures hundreds of failures before his idea works. But his failures are suffered at home. The world does not see them. Only his success is patented.

[1] Recollections of a Busy Life, p. 98.

[2] Recollections, p. 103.

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But the social inventor must publish his ideas before he knows whether they will work. He must bring others to his way of thinking before he can even start his experiment. The world is taken into his secret while he is feeling his way. They see his ideas in the "ism" stage. To the negative democrat this brings no discredit: he has no device to offer. To the constructive democrat it brings the stigma of faddism. The conservatives see in him not only the radical but also the crank with a machine that might possibly work.

Greeley's *Tribune*, prior to 1854, was the first and only great vehicle this country has known for the ideas and experiments of constructive democracy. The fact that the circulation of the newspaper doubled and redoubled beyond anything then known in journalism, and in the face of ridicule heaped on virulence, proves that the nation, too, was feeling its way towards this new democracy.

Naturally enough, Greeley was a puzzle both to the radicals and to the standpats of his day. The *Working Man's Advocate*[1] said of him:

> If ever there was a nondescript, it is Horace Greeley. One night you may hear him make a patriotic speech at a Repeal[2] meeting. The next day, he will uphold a labor-swindling, paper-money system . . . We should be sorry to be driven to the conclusion that such a man could be actuated only by paltry partyism.

The Abolitionists were incensed when he wrote to the Anti-Slavery Convention at Cincinnati:

> If I am less troubled concerning the Slavery prevalent in Charleston or New Orleans, it is because I see so much slavery in New York, which appears to claim my first efforts . . . Wherever the ownership of the soil is so engrossed by a small part of the community, that the far larger number are compelled to pay whatever the few may see fit to exact for the privilege of occupying and cultivating the earth, there is something very like Slavery . . . Wherever opportunity to labor is obtained with difficulty, and is so deficient that the employing class may virtually

[1] June 29, 1844, p. 3, c. 4.

[2] Repeal of the Act uniting Ireland with England.

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prescribe their own terms and pay the Laborer only such share as they choose of the product, there is a very strong tendency to Slavery.[1]

The Whigs and protectionists used him, but dreaded him. The *Express* charged him with

attempting incessantly . . . to excite the prejudices of the poor against the rich, and in the general, to array one class of society against the other . . . We charge the *Tribune* . . . with representing constantly that there is a large amount of suffering arising from want of employment, and that this employment the rich might give. We charge the *Tribune* with over-rating entirely the suffering of the poor. . . . all of which tallies with, and is a portion of the very material, which our opponents use to prejudice the poor against the Whigs as a party.[2]

Two years after this attack by the *Express*, the *Courier* read him out of the party:

There can be no peace in the Whig ranks while the New York *Tribune* is continued to be called Whig, . . . The *principles* of the Whig party are well defined; They are *conservative* and inculcate a regard for the laws and support of all established institutions of the country. They eschew *radicalism* in every form; they sustain the constitution and the laws; they foster a spirit of *patriotism* . . . The better way for the *Tribune* would be at once to admit that it is only Whig on the subject of the Tariff . . . and then devote itself to the advocacy of Anti-Rent, Abolition, Fourierite and Vote-yourself-a-farm doctrines.[3]

These quotations give us the ground of Greeley's "isms"—the elevation of labor by protecting and reorganizing industry. Even the protective tariff, favored by the Whigs, was something different in his hands. The tariff arguments of his boyhood had been capitalistic arguments. Protect capital, their spokesmen said, because wages are too high in this country. Eventually wages will come towards the European level and we shall not need protection. Greeley reversed the plea: protect the

[1] *Tribune*, June 20, 1845, p. 1, c. 3.

[2] *Tribune*, August 5, 1845, p. 2, c. 2.

[3] *Courier and Enquirer*, August 14, 1847 quoted in *Weekly Tribune*, August 21, 1847, p. 3, c. 5.

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wage-earner, he said, in order that he may rise above his present condition of wages slavery. The only way to protect him against the foreign pauper is to protect the price of his product. But, since capital owns and sells his product, we needs must first protect capital. This is unfortunate, and we must help the laborer as soon as possible to own and sell his product himself. "We know right well," he says,[1] "that a protective tariff cannot redress all wrongs . . . The extent of its power to benefit the Laborer is limited by the force and pressure of *domestic* competition, for which Political Economy has as yet devised no remedy . . . ."

Here was the field for his socialism. It would do for domestic competition what protection would do for foreign competition. Protectionism and socialism were the two wheels of Greeley's bicycle. He had not learned to ride on one.

But the socialism which Greeley espoused would not be recognized to-day. It is now condescendingly spelled "utopianism." He felt that the employers were victims of domestic competition just as were the laborers, and he assumed that they would be just as glad as the laborers to take something else. What he offered to both was a socialism of class harmony, not one of class struggle.

In the idealistic interpretation of history there are two kinds of idealism—a higher and a lower. Greeley's significance is the struggle of the two in his mind, the elimination of the unfit from each and the survival and coalescence of the fit in the Republican party. The higher idealism came to him through the transcendental philosophers of his time. The lower came from the working classes. The higher idealism was humanitarian, harmonizing, persuasive. The lower was class-conscious, aggressive, coercive. The higher was a plea for justice; the lower a demand for rights. In 1840 Greeley was a higher idealist. In 1847 he had shaved down the higher and dovetailed in the lower. In 1854 the Republican party built both into a platform.

Let us see the origins of these two levels of idealism before they came to Greeley.

[1] *Tribune*, March 27, 1845, p. 2, c. 2.

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Boston, we are told, is not a place—it is a state of mind. But every place has its state of mind. The American pioneer, in his frontier cabin, in the rare moments which his battle with gigantic nature leaves free for reflection, contemplates himself as a trifle in a succession of accidents. To him comes the revivalist, with his faith in a God of power and justice, and the pioneer enters upon a state of mind that constructs order out of accident and unites him with the almighty ruler of nature. This was the state of mind of Boston when Boston was Massachusetts Bay and Plymouth Colony.

But Massachusetts grew in wealth. Wealth is merely nature subdued to man. Capital is the forces of nature taking orders from property owners. God is no longer appreciated as an ally for helpless man. The revivalist becomes the priest and the protector of capital.

But now a new contest begins. Capital requires labor to utilize it. Labor depends on capital for a living. The contest is not between man and nature, but between man and the owner of capitalized nature. Boston saw the first outbreaks of the struggle in 1825 and in 1832. In the former year the house carpenters, in the latter year the ship carpenters, determined that no longer would they work from sunrise to sunset. They conspired together and quit in a body. In the former year the capitalists, with Harrison Gray Otis at their head, in the latter year the merchant princes whose ships traversed the globe, took counsel together and published in the papers their ultimatum requiring their workmen to continue as before from dawn to dark.[1] Losing their contention, the workmen again in 1835 began a general strike for the ten-hour day throughout the Boston district, only again to lose. Meanwhile the factory system had grown up at Lowell and other places, with its women and children on duty thirteen and fourteen hours a day, living in company houses, eating at the company table and required to attend the company church. While some of the ten-hour strikes of 1835 had been successful in Philadel-

[1] *Columbian Centinel*, April 20, 23, 1825; *Independent Chronicle*, May 19, 23, 26, 30, 1832.

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phia and in New York, the working people of New England were doomed to the long day for another fifteen years.

It was in the midst of this economic struggle that unitarianism and transcendentalism took hold of the clergy. These movements were a revolt against the predicament in which the God of nature had unwittingly become the God of capital. They were a secession back to the God of man. At first the ideas were transcendental, metaphysical, allegorical, harmless. This was while the workingmen were aggressive and defiant in their demands and strikes. But, after 1837 and during the seven years of industrial depression and helplessness of the workingmen following that year of panic, transcendentalism became pragmatic. Its younger spokesmen allied themselves with labor. They tried to get the same experience and to think and feel like manual workers. Brook Farm was the zealous expression in 1842 of this struggle for reality and for actual unity; and after 1843 the Brook Farm representatives began to show up at the newly-organized New England and New York conventions of workingmen, calling themselves also by the lofty name of "working men" delegates.

But this was not enough. Reality demanded more than unity of sentiment. It demanded reconstruction of society on the principle of unity. At this juncture, 1840, Albert Brisbane came forward with his Americanization of Charles Fourier's scheme of social reorganization. Here was a definite plan, patterned on what seemed to be a scientific study of society and of psychology. Brook Farm welcomed it and tried it. Greeley clothed himself with it as gladly as Pilgrim put on the armor after emerging from the slough of despond. He opened the columns of the *Tribune* to Brisbane. He became a director of the North American Phalanx, president of the national society of Associationists (Fourierists), editorial propagandist and platform expounder. Total reorganization of society based on harmony of interest; brotherhood of capital, labor and ability; a substitute for the competition which enslaved labor in spite of the natural sympathy of the capitalist for his oppressed workmen; faith in the goodness of human nature if scientifically directed—these were the exalted ideas and naïve assumptions

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that elicited the devotion of Greeley and his fellow disciples of the gospel of transcendentalism.

Two things disabused his mind. One was the actual failure and bankruptcy of his beloved phalanxes; the other was the logic and agitation of the workingmen. The higher idealism dissolved like a pillar of cloud, but it had led the way to the solid ground of the lower idealism. What were the origins of this lower idealism?

Three years ago, at Newcastle-on-Tyne, in England, in the company of a workingman official of a trade union, I visited the thousand acres of moorland belonging to the mediæval city and now kept open as a great playground within the modern city. My trade-union official showed me the thousands of workingmen and their families enjoying themselves in the open air. I asked him about the fifty or a hundred cows that I saw calmly eating grass in the midst of this public park. He explained that these cattle belonged to the descendants of the ancient freemen of Newcastle, who, in return for defending the town against the Scots, had been granted rights of pasturage outside the town. He said there had recently been a great struggle in Newcastle, when these freemen wanted to enclose the moor, to lease it for cultivation and to divide the rents among themselves. The workingmen of the city rose up as one man and stopped this undertaking. But they could not get rid of the cows.

One hundred and thirty years before this time, in the year 1775, Newcastle had seen a similar struggle. At that time the freemen were successful; they succeeded in having the rentals from a part of the moor, which had been enclosed and leased, paid over in equal parts to each of them. Thomas Spence, netmaker, thereupon conceived an idea. He read a paper before the Philosophical Society of Newcastle, proposing that all the land of England should be leased and the proceeds divided equally among all the people of England. He was promptly expelled from the Philosophical Society. He went to London and published his scheme in a book.[1] In 1829 the

[1] J. M. Davidson, Four Precursors of Henry George, pp. 26 *et seq.* Spence's book is reprinted by E. W. Allen, (London, 1882), under the title, The Nationalization of Land, 1775 and 1882.

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book came to New York and furnished the platform for the first workingmen's political party.[1] This party Americanized Spence by amending the Declaration of Independence. They made it read: "All men are equal, and have an inalienable right to life, liberty and *property*."

George Henry Evans, also Englishman by birth but American by childhood, and by apprenticeship in a printing-office at Ithaca, started a paper, the *Working Man's Advocate*, in 1829, and became the thinker of the workingmen's party. Before he began to think he adopted the motto of the party as the motto of his paper: "All children are entitled to equal education; all adults to equal property; and all mankind to equal privileges." He soon saw his mistake, as did most of the other workingmen. Every individual has a right to an unlimited amount of that kind of property which he produces by his own labor and without aid from the coerced labor of others. Such an unlimited right excludes equality, and equal right to property can therefore be asserted only as regards that which is not the product of his own or other's labor, namely, land. But the holders of the existing private property in land could not be displaced without a violent revolution. This Evans saw from the violent attacks made on him and the workingmen's party. But there was an immense area still belonging to the people and not yet divided. This was the public domain. There man's equal right to land could be asserted. He sent marked copies of his paper to Andrew Jackson in 1832, before Jackson's message on the sale of the public lands. The workingmen's party disappeared and was followed by the trades' unions of 1835 and 1836. The sudden rise of prices and the increased cost of living compelled labor to organize and strike throughout the eastern cities, from Washington to Boston. These strikes were for the most part successful; but the workmen saw prices and rents go up and swallow more than the gains achieved by striking. Evans pointed out the reason why their efforts were futile. The workingmen were bottled up in the cities. Land speculation kept them from taking up vacant land near by or in the West.

[1] *Working Man's Advocate*, June 8, 1844, p. 1, c. 1.

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If they could only get away and take up land, then they would not need to strike. Labor would become scarce. Employers would advance wages and landlords would reduce rents. Not for the sake of those who moved West did Evans advocate freedom of the public lands, but for the sake of those who remained East. This was the idea that he added to the idea of Andrew Jackson and Andrew Johnson. Theirs was the squatter's idea of the public domain—territory to be occupied and defended with a gun, because the occupant was on the ground. His was the idealistic view of the public domain—the natural right of all men to land, just as to sunlight, air and water. The workingmen of the East were slaves because their right to land was denied. They were slaves, not to individual masters like the negroes, but to a master class which owned their means of livelihood. Freedom of the public lands would be freedom for the white slave. Even the chattel slave would not be free if slavery were abolished without providing first that each freedman should have land of his own. Freedom of the public lands should be established before slavery was abolished.

These views were not original with Evans. They were the common property of his fellows, born of their common experience, formulated in their mutual intercourse and expressed in the platforms of their party and the resolutions of their trades' unions. Thus at the first convention of the National Trades' Union in 1834, one of the resolutions recited

> that this Convention would the more especially reprobate the *sale* of the public lands, because of its injurious tendency as it affects the interests and independence of the laboring classes, inasmuch as it debars them from the occupation of any portion of the same, unless provided with an amount of capital which the greater portion of them, who would avail themselves of this aid to arrive at personal independence, cannot hope to attain, owing to the many encroachments made upon them through the reduction in the wages of labor consequent upon its surplus quantity in the market, which surplus would be drained off, and a demand for the produce of mechanical labor increased, if these public lands were left open to actual settlers.[1]

[1] *The Man*, August 30, 1834.

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But it was Evans, mainly, who gathered these ideas together and framed them into a system. He and his disciple, Lewis Masquerier, worked out the three cardinal points of a natural right: equality, inalienability, individuality.[1] Men have equal rights to land because each man is a unit. This right is inalienable: a man cannot sell or mortgage his natural right to land nor have it taken away from him for debt, any more than he can sell himself or be imprisoned for debt. This right belongs to the individual as such, not to corporations or associations. Here was his criticism of communism and Fourierism. Establish the individual right to the soil, and then men will be free to go into, or stay out of, communities as they please. Association will then be voluntary, not coercive, as Fourierism would make it. Thus did the communistic agrarianism of Thomas Spence and of the Working Men's Party of 1829 filter down into the individualistic idealism of American labor reform in 1844.

When the labor movement broke down with the panic of 1837, Evans retired to a farm in New Jersey, but kept his printing press. When the labor movement started up again in 1844, he returned to New York and again started his paper, the *Working Man's Advocate*, later changing the name to *Young America*. He and his friends organized a party known as National Reformers, and asked the candidates of all other parties to sign a pledge to vote for a homestead law. If no candidate signed, they placed their own tickets in the field. They printed pamphlets, one of which, *Vote Yourself a Farm*, was circulated by the hundred thousand. In 1845 they united with the New England Working Men's Association to call a national convention, which, under the name of the Industrial Congress, held sessions from 1845 to 1856. The one plank in the platform of the New England Working Men's Association had been a demand for a ten-hour law, and the two planks, land reform and ten hours for labor, were the platform of the Industrial Congress. Through the New England Association

[1] Reprinted in Masquerier, Sociology, or the Reconstruction of Society, Government and Property (New York, 1877), pp. 68 *et seq.*

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the Brook Farmers and other Fourierists came into the land-reform movement.

It was in the latter part of 1845 that Greeley began to notice the homestead agitation. In the *Tribune*[1] he wrote an editorial beginning with his recollections of the workingmen's party which he had found fourteen years before when he came to New York. Now, he said, there had come into existence "a new party styled 'National Reformers' composed of like materials and in good part of the same men with the old Working Men's Party." He then describes their scheme of a homestead law and adds:

Its objects are, the securing to every man, as nearly as may be, a chance to work for and earn a living; secondly, the discouragement of land monopoly and speculation, and the creation of a universally land-holding People, such as has not been since the earlier and purer days of the Israelite Commonwealth. . . . Yet we are not prepared to give it our unqualified approval. The consequences of such a change must be immense. . . . We cannot see it lightly condemned and rejected. Will not those journals which have indicated hostility to this project oblige us by some real discussion of its merits? Calling it 'Agrarian,' and its advocates 'Empire-Club men' and 'Butt-Enders' . . . does not satisfy us, nor will it satisfy the people. . . .

Evans, in his *Young America*, commented on this editorial, and especially on Greeley's assertion that the reason why the workingmen's measures had not sooner attracted attention was that they had been put forth under what he called "unpopular auspices." Evans said:

All reforms are presented under "unpopular auspices," because they are presented by a minority who have wisdom to see and courage to avow the right in the face of unpopularity; and all reforms are pushed ahead by popularity-hunters as soon as the pioneers have cleared the way. I do not mean to class the editor of the *Tribune* amongst the popularity hunters, but simply to express a truth called forth by his rather equivocal designation of that enlightened and patriotic body of men who, if the history of this State and Union be ever truly written, will be prominent in it as the "Working Men's Party."[2]

[1] *Weekly Tribune*, November 29, 1845, p. 5, c. 5.

[2] *Young America*, November 29, 1845.

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Five months later Greeley definitely committed himself to the workingmen's platform and to the reasoning with which they supported it.

> The freedom of the public lands to actual settlers, and the limitation of future acquisitions of land to some reasonable amount, are also measures which seem to us vitally necessary to the ultimate emancipation of labor from thraldom and misery. What is mainly wanted is that each man should have an assured chance to earn, and then an assurance of the just fruits of his labors. We must achieve these results yet; we *can* do it. Every new labor-saving invention is a new argument, an added necessity for it. And, so long as the laboring class must live by working for others, while others are striving to live luxuriously and amass wealth out of the fruits of such labor, so long the abuses and sufferings now complained of must continue to exist or frequently reappear. We must go to the root of the evil.[1]

From the date when Greeley took up the measure it advanced throughout the Northern States by rapid bounds. He used precisely the language and arguments of the *Working Man's Advocate*.

The National Reformers and the Industrial Congress had worked out logically three kinds of legislation corresponding to Evans's three cardinal points of man's natural right to the soil. These were land limitation, based on equality; homestead exemption, based on inalienability; freedom of the public lands, based on individuality.

In order that the rights of all might be equal the right of each must be limited. For the older states it was proposed that land limitation should take effect only on the death of the owner. Land was not to be inherited in larger quantities than 160 or 320 acres. Wisconsin was the only state in which this measure got as far as a vote in the legislature, that of 1851, where it was carried in the lower house by a majority of two votes but was defeated on a final vote.[2] The struggle was exciting and Greeley watched it eagerly. Then he wrote:

[1] *Weekly Tribune*, May 2, 1846, p. 3, c. 3.

[2] J. G. Gregory, "Land Limitation, A Wisconsin Episode of 1848 to 1851." Parkman Club Papers, vol. ii.

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Well, this was the first earnest trial to establish a great and salutary principle; it will not be the last. It will yet be carried, and Wisconsin will not need half so many poorhouses in 1900 as she would have required if land limitation had never been thought of.[1]

The measure was brought up in the New York legislature and was vigorously advocated by Greeley, but without decisive action.

The second kind of legislation, based on man's natural right to the soil, was homestead exemption. Projects of this class were far more successful than those looking to the limitation of holdings. Exemption legislation swept over all the states, beginning with Wisconsin in 1847,[2] but in mutilated form. The workingmen demanded absolute inalienability for each homestead, as complete as that of the nobility of Europe for each estate. But the laws actually enacted have not prohibited sale or mortgage of the homestead, as Evans proposed. They have merely prohibited levy and execution on account of debts not secured by mortgage. Voluntary alienation is allowed. Coercive alienation is denied. Greeley and the workingmen would have disallowed both.

Freedom of the public lands was the third sort of legislation demanded. Every individual not possessed of 160 acres of land should be free to get his equal share in fee simple out of the public domain without cost. The public domain, it was argued, belongs, not to the states nor to the collective people of all the states nor to the landowners and taxpayers of the states, but to each individual whose natural right has not as yet been satisfied. America is fortunate in having this vast domain unoccupied. Here all the cardinal points of a natural right can be legalized without damaging vested rights: individuality, by private property without cost; equality, by limitation to 160 acres; inalienability, by homestead exemption. This was the idealistic vision in 1844 of the Republican party's first great act in 1862.

[1] *Tribune*, March 27, 1851.

[2] The legislation of Texas in 1829 and 1837 was entirely different in character and motive. Somewhat similar laws had been adopted in Mississippi, Georgia, Alabama and Florida prior to 1845 as a result of the panic of 1837.

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Greeley espoused all of these measures. He himself introduced a homestead bill in Congress in 1848. He urged land limitation and homestead exemption upon the state legislatures. The *Tribune* carried his message throughout the North and prepared the mind of the people for the constructive work of the future.

I might speak of others who helped to carry the workingmen's idealism into Republican reality. I will mention only Galusha A. Grow, the "father of the Republican party," and Alvan E. Bovay, the disciple of Evans.

Galusha Grow's first great speech in Congress, in 1852, on Andrew Johnson's homestead bill, was printed by him under the title "Man's Right to the Soil," and was merely an oratorical transcript from the *Working Man's Advocate*.

The other less distinguished father was Alvan E. Bovay. For him has been claimed the credit of first suggesting to Greeley the name Republican party, and of bringing together under that name the first little group of men from the Whig, Democratic and Free Soil parties at Ripon, Wisconsin, in 1854.[1] Bovay had moved to Wisconsin in 1850. Before that time he had been associated with Evans and with the workingmen's party in New York, almost from its beginning in 1844. He was secretary, treasurer and delegate to the Industrial Congress. It was in New York that he became acquainted with Greeley. Bovay's speeches were reported at length in the *Working Man's Advocate* and *Young America*, and his letters frequently appeared in the *Tribune*. Whether he was the only father of the party or not, it is significant that it was these early views on the natural right to land, derived from Evans and the workingmen, that appeared in the Republican party wherever that party sprang into being. It is also an interesting fact that the workingmen were accustomed to speak of theirs as the true Republican party, and that Evans, in his paper in 1846, predicts that the National Reformers mark the beginning of the period when

[1] Curtis, History of the Republican Party, vol. i, p. 173. There were doubtless other spots of independent origin. See A. J. Turner, Genesis of the Republican Party (1898; pamphlet).

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there "will be but two parties, the great Republican Party of Progress and the little Tory Party of Holdbacks."[1]

Greeley also took up the ten-hour plank of the workingmen's party. Prior to 1845, under the influence of Fourierism, he had opposed labor legislation. In 1844 he wrote:

The relations of Labor and Capital present a vast theme, ... Government cannot intermeddle with them without doing great mischief. They are too delicate, complex and vitally important to be trusted to the clumsy handling of raw and shallow legislators. . . . The evils . . . . are Social, not Political, and are to be reached and corrected by Social remedies. . . . Legislation to correct such abuses can seldom do much good and will often do great harm. . . .[2]

His idea of the harmony of interests is seen in his hope that employers would reduce the hours of labor by agreement. "We do hope to see this year," he wrote in 1844, "a general convention of those interested in Factory Labor to fix and declare the proper hours of labor, which all shall respect and abide by. . . ."[3] And when the first Industrial Congress was about to assemble he wrote:

An Industrial Congress, composed of representatives of Employers and Workmen, in equal numbers, ought to be assembled, to regulate generally the conditions of Labor. . . . A general provision, to operate coextensively with the Union, that ten hours shall constitute a day's work, might be adopted without injury to any and with signal benefit to all. . . .[4]

After the Congress he wrote again:

We should greatly prefer that a satisfactory adjustment were arrived at without invoking the aid of the law-making power, except possibly in behalf of minors. We believe if the matter is only approached in the right way by those interested, discussed in the proper spirit, and pursued with reasonable earnestness and perseverance, that legislation will

[1] *Young America*, March 21, 1846, p. 2, c. 3.

[2] *Tribune*, January 25, 1844, p. 2, c. 1; February 16, 1844, p. 2, c. 2.

[3] *Tribune*, February 16, 1844, p. 2, c. 1.

[4] *Tribune*, September 30, 1845, p. 2, c. 1.

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be found superfluous. . . . How many hours shall constitute a day's or a week's work should be settled in each department by a general council or congress of all interested therein, whose decision should be morally binding on all and respected by our Courts of Justice.[1]

But, with the failure of the Industrial Congress to bring in the employers, Greeley aggressively adopted the legislative program of the workingmen and harmonized it with his theory of the protective tariff. Before this he had written:

If it be possible to interpose the power of the State beneficently in the adjustment of the relations of Rich und Poor, it must be evident that internal and not external measures like the Tariff, would be requisite. A tariff affects the relation of country with country and cannot reasonably be expected to make itself potently felt in the relations of class with class or individual with individuals.[2]

Two years afterward, when New Hampshire had adopted the first ten-hour law and the employers were violating it, he wrote:

That the owners and agents of factories should see this whole matter in a different light from that it wears to us, we deem unfortunate but not unnatural. It is hard work to convince most men that a change which they think will take five hundred or a thousand dollars out of their pockets respectively is necessary or desirable. We must exercise charity for the infirmities of poor human nature. But we have regretted to see in two or three of the Whig journals of New Hampshire indications of hostility to the Ten-Hour regulation, which we can hardly believe dictated by the unbiased judgment of their conductors. . . . What show of argument they contain is of the regular Free Trade stripe, and quite out of place in journals favorable to Protection. Complaints of legislative intermeddling with private concerns and engagements,—vociferations that Labor can take care of itself and needs no help from legislation—that the law of Supply and Demand will adjust this matter, &c., &c.—properly belong to journals of the opposite school. We protest against their unnatural and ill-omened appearance in journals of the true faith. . . To talk of the Freedom of Labor, the policy of leaving it to make its own bargains, &c., when the fact is that a man who has a family to support and a house hired

[1] *Weekly Tribune*, December 27, 1845, p. 4, c. 4.

[2] *Weekly Tribune*, August 2, 1845, p. 3, c. 1.

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for the year is told, 'If you will work thirteen hours per day, or as many as we think fit, you can stay; if not, you can have your walking papers: and well you know that no one else hereabout will hire you' —is it not most egregious flummery?[1]

The foregoing quotations from Greeley depict the evolution of the theory of the protective tariff out of the Whig theory into the Republican theory. The Whig idea was protection for the sake of capital. Greeley's idea was protection for the sake of labor. The Whigs did not approve of Greeley, but his theory was useful in 1840, and in that year they hired him to get out campaign literature. At that time he was a higher idealist, a transcendentalist, a zealot for harmony of interests, and believed that capitalists would voluntarily coöperate with labor and need not be coerced by legislation. He was disabused of this notion when he saw the way in which employers treated the ten-hour movement. Whatever the workingmen had gained on this point they had gained against the Whigs, through Jackson, Van Buren and the Democrats. Modifying his faith in harmony of interests, he took up legislation in behalf of class interests and rounded out a theory of labor legislation by the states to supplement protective tariff legislation by Congress. This became the Republican theory of protection in place of the dying Whig theory. True, the Republican party has not always lived up to this theory; but its defection is a further illustration of the American practice of using a theory of human rights to augment property rights. And, after all, it has been the Republican states that have led the way in labor legislation.

I have attempted to sketch the origin and evolution of the two species of idealism that struggled for existence in this epoch of American history. This biology of ideas exhibits both an adaptation to and a rejection of the contemporaneous economic development. The transcendentalism of New England, with its humanized God and its deified man, was rather a protest against than a product of the new economics. As the years advanced and industrial anarchy deepened, the protest

[1] *Weekly Tribune*, September 18, 1847, p. 5, c. 2.

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turned to reconstruction. But the tools and materials for the new structure were not politics and legislation, but an idealized, transcendental workingman. Transcendentalism resurrected man, but not the real man. It remained for the latter, the man in the struggle, to find his own way out. By failure and success, by defeat, by victory often fruitless, he felt along the line of obstacles for the point of least resistance. But he, too, needed a philosophy. Not one that would idealize him, but one that would help him win a victory. Shorter hours of labor, freedom to escape from economic oppression, these were the needs that he felt. His inalienable "natural right" to life, liberty, land and the products of his own labor—this was his philosophy. Politics and legislation were his instruments.

It is easy to show that "natural rights" are a myth, but they are, nevertheless, a fact of history. It was the workingmen's doctrine of natural rights that enabled the squatter to find an idealistic justification for seizing land and holding it in defiance of law. "Natural right," here as always, was the effective assailant of legal right. Had it not been for this theoretic setting, our land legislation might have been piecemeal and opportunist like the English—merely a temporizing concession to the squatters on account of the difficulty of subduing them by armed force. Such an opportunist view, without the justification of natural rights, could not have aroused enthusiasm nor created a popular movement nor furnished a platform for a political party. The Republican party was not an anti-slavery party. It was a homestead party. On this point its position was identical with that of the workingmen. Only because slavery could not live on one-hundred-and-sixty-acre farms did the Republican party come into conflict with slavery.

Thus has the idealism of American history both issued from and counteracted its materialism. The editorial columns of the *Tribune* from 1841 to 1854 are its documentary records. There we see the two main currents of idealism passing through the brain of Greeley and coming out a constructive program for the reorganization of society.

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THE WHEAT SITUATION IN WASHINGTON

THE Pacific coast of the United States, by its comparative remoteness from the leading markets of the world, is characterized to a considerable extent by industrial conditions differing from those obtaining in other parts of the country. This is especially the case with those industries which depend upon markets in Europe or in the Orient. Fruit-raising in California and the lumber industry in Washington and Oregon have not been so greatly influenced by this remoteness as has the raising of grain, especially wheat. In the cases of fruit and lumber, producers have looked to the eastern part of the country for their principal markets. With increasing improvements in transportation, remoteness of situation has tended to play a constantly lessening part in the character of these industries.

In the case of wheat production, however, the Pacific coast has always been influenced by its remoteness from the leading markets of the world and by the industrial conditions of the countries with which it has traded. It is true that the price of wheat at Liverpool largely determines the price at Chicago as well as at Seattle and Tacoma. Nevertheless, the nearness to eastern and European markets of the wheat producer of Minnesota and the Dakotas, as compared with the producer in Washington, and the better facilities which he enjoys in the transportation of his produce, render his industrial condition different from that of his Pacific coast competitor. The unique character of the wheat situation in Washington is further accentuated by the growth of trading relations with the Orient. It is in connection with this Asiatic commerce that we can see some of the most salient features in Washington's peculiar industrial position. When California was the leading state in the production of wheat on the Pacific coast, she was exposed to influences similar to those which now obtain in her sister state to the north. In California, however, these influences were less marked, as a larger proportion of the wheat crop was consumed

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at home; and the oriental trade was in a much less developed state.

In order to understand these influences it will be necessary to consider the extent of the wheat production in Washington, the principal markets which the state serves, the influence of these markets upon the exporting and milling industries of the state, and the relation of these industries to the farming population and to the kinds of wheat grown for shipment. All of these phases of the wheat situation are intimately related to one another.

Washington may be roughly divided into two parts: the region east of the Cascade Mountains, and the region west. The country west of the Cascades constitutes something less than a third of the state's area. The leading industry here is the production and shipment of lumber. The region immediately east of the Cascades is dry and barren except where irrigated. Further east, however, embracing about one-half of the area of the state, is one of the great agricultural sections of the Pacific coast. Though the hardier varieties of fruit are raised in large quantities in different parts of this region, the principal crop is wheat. During the five years from 1903 to 1907, inclusive, this crop varied from 25,645,000 bushels in the first of these years to 45,906,000 bushels in the last.[1] The output of 1907 placed Washington among the six or seven greatest wheat-producing states of the Union.

With the exception of the crop of 1904, practically no wheat from Washington has been shipped east by rail during the last five years. Most of this cereal raised within the state has been sent to Seattle, Tacoma and Portland, whence it has been exported to foreign countries either as wheat or as flour. Of the 45,906,000 bushels constituting the crop of 1907, 38,201,000 bushels were sent by rail from eastern Washington to these

[1] Based upon figures for the shipments of wheat from eastern Washington given the writer by the general freight agents of the Oregon Railroad and Navigation Co., the Northern Pacific, the Great Northern and the Spokane and Inland Empire Electric railroads, the wagon shipments of wheat to the several mills of the state, and the estimates of leading farmers of the amounts of wheat reserved for seed and feed. There are no trustworthy official statistics of the production of wheat in Washington.

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great shipping-points west of the Cascades. Of the remainder of this crop about 3,456,000 bushels were ground into flour in local mills, *i. e.*, mills dependent upon the adjacent regions for their supply of wheat, and some 3,872,000 bushels were retained by farmers for seed and feed. In addition to these amounts a few hundred thousand bushels were shipped down the Columbia River by steamer to Portland.

Of the wheat shipments from eastern Washington about three-fourths find their way to Seattle and Tacoma. Practically all the wheat received in these two cities is raised within the state. The wheat received at Portland is produced in Oregon, Washington and Idaho. As most of the wheat exported from Washington passes through Seattle and Tacoma, it will not be amiss to consider the Washington situation with reference to the exports from these two cities.

In the year beginning July 1, 1907, and ending June 30, 1908, there were exported from the Puget Sound ports 15,937,780 bushels of wheat and 2,178,380 barrels of flour.[1] As each barrel of flour is equivalent to four and a-half bushels of wheat, the total exports would amount to 25,740,490 bushels of wheat, or considerably more than half the total crop of the state and nearly three-fourths of the amount shipped from eastern Washington. Of the 15,957,780 bushels of wheat exported from Seattle and Tacoma about one-half went to Europe—6,152,821 bushels going to the United Kingdom.[2] Of the 2,178,380 barrels of flour exported from Puget Sound 1,676,398 barrels went to the Orient—931,892 barrels going to the three ports of Hong Kong, Shanghai and Yokohama.[3]

It will be seen from these figures that Europe is the most important market for Washington wheat, and the Orient the most important market for Washington flour. The proportions of wheat going to Europe, South America, California, *etc.*, have not changed materially during the last three or four years, although the actual amounts have varied greatly during this period. The flour exports have gone principally to the Orient

[1] *Commercial Review*, Portland, Oregon, annual number, July, 1908, p. 46.

[2] *Ibid.*, p. 46.

[3] *Ibid.*, pp. 46, 48.

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for several years. More flour has been sent to California and South America recently than in the past; but China and Japan remain the principal consumers of Washington flour.

While the principal markets for wheat and flour have been practically the same during the last four or five years, the proportions of wheat and flour exported from the state have varied widely. Marked differences are also to be noted from year to year in the amount of wheat ground into flour. During each of the years from 1904 to 1907 inclusive the total amount of wheat raised, the amounts shipped by rail to Seattle, Tacoma and Portland and the amount of each crop ground into flour within the state are as follows:

YEAR.	AMOUNT RAISED.	SHIPMENTS BY RAIL.	AMOUNT GROUND INTO FLOUR.[1]
1904	31,237,000 bushels	25,531,000 bushels	10,262,207 bushels
1905	41,864,000 "	33,849,000 "	13,604,825 "
1906	36,979,000 "	29,861,000 "	17,505,064 "
1907	45,906,000 "	38,201,000 "	14,494,294 "

It will be seen that, while the total production of wheat and the quantity of wheat ground into flour have both tended to increase, there is no close relationship between the amounts of wheat produced and flour manufactured. Thus in the year 1906, when only 36,979,000 bushels of wheat were raised in Washington, 17,505,064 bushels of that crop were ground into flour, while of the crop of 1907, which amounted to 45,906,000 bushels, only 14,494,294 bushels were milled.

With these figures may be compared those for the exports of wheat and flour from Seattle and Tacoma, during the seasons when the crops of 1904 to 1907 inclusive were being marketed. These figures were as follows:[2]

SEASON.	EXPORTS OF WHEAT.	EXPORTS OF FLOUR.	TOTAL.
1904–05	2,233,906 bus.	1,741,399 bbl. = 7,837,295 bus.	10,070,201 bus.
1905–06	12,065,295 "	2,129,478 " = 9,582,651 "	21,647,946 "
1906–07	6,187,337 "	3,205,056 " = 14,422,752 "	20,610,089 "
1907–08	15,937,780 "	2,178,380 " = 9,802,710 "	25,740,490 "

[1] There are about fifty flour mills in the state in active operation. The figures given above were obtained by the writer from the millers themselves.

[2] *Commercial Review*, annual numbers, 1905, pp. 46, 48; 1906, pp. 46, 47; 1907, pp. 46, 47; 1908, pp. 46, 48.

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It will be observed that the exports of flour were relatively heavy for the season of 1906–07 as compared with those of 1904–05, 1905–06 and 1907–08. The exports of wheat on the other hand are comparatively large for the seasons of 1905–06 and 1907–08. Owing to the large shipments of wheat east by rail during the year 1904–05, the exports from Puget Sound were comparatively light. If the wheat crop of 1904 had been shipped west to Seattle, Tacoma and Portland in the same relative proportions as in ordinary years, the exports of wheat would have been large for the season of 1904–05. During that year, however, a great demand in the Mississippi valley for certain varieties of Washington wheat led to large shipments east by rail. Barring this exceptional season, the proportions of wheat shipped as flour from the Puget Sound ports to the total exports were forty-four per cent in the season of 1905–06, seventy per cent in 1906–07 and only thirty-eight per cent in 1907–08.

As most of the wheat exported from Washington goes by ship to Europe and most of the flour to Asia, it can be said that during the seasons of 1905–06 and 1907–08 the shipments to Europe were relatively heavy, while those of 1906–07 were comparatively light. The exports to the Orient, on the other hand, were especially large in 1906–07, and the exports to Europe were comparatively small during the preceding and succeeding seasons.

With this variation in the quantity of flour manufactured and exported from the state may be compared the average prices of wheat prevailing at Seattle and Tacoma during the seasons considered. The amounts of flour exported from Puget Sound and the average prices prevailing during the seasons of 1903–04 to 1907–08 inclusive were as follows:

Season.	Exports of flour.		Average price per bushel of wheat.[1]
1904–05	1,741,399 bbl.	= 7,836,295 bus. of wheat	86 cents.
1905–06	2,129,478 "	= 9,582,651 " "	78 "
1906–07	3,205,056 "	= 14,422,752 " "	76 "
1907–08	2,178,580 "	= 9,802,710 " "	84 "

[1] *Commercial Review*, annual numbers, 1905 to 1908, p. 46. The prices quoted are the annual averages for all the varieties of wheat exported from the Puget Sound ports.

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In the figures given here there seems to be a close relationship between the amount of flour exported and the price of wheat. When the price of wheat is low the exports of flour are large. In the season of 1906–07, when the average price of wheat was seventy-six cents per bushel, the largest shipments of flour to any oriental port from Puget Sound were made to Shanghai, China.[1] During that season nearly 659,000 barrels arrived at that port. In 1907–08, when the average price of wheat had risen to eighty-four cents per bushel, these shipments fell off to 197,638 barrels.[2] In 1904–05, when the average price of the wheat at Tacoma and Seattle was eighty-six cents per bushel, only 43,830 barrels were sent to this port.[3]

The amount of flour exported from Washington thus tends to vary inversely with the price of wheat. When the price of wheat is low, it is more profitable to grind it into flour and export it to the Orient than to ship it to Europe; but it is unprofitable to do this when the price is high. It is a common statement among millers in Tacoma and Seattle that seventy-cent wheat means a flourishing business, but eighty-cent wheat a depressing season. When the price of wheat is from sixty-five to seventy-five cents per bushel, there is little difficulty in finding a good market for flour in the Orient; but when the price mounts to eighty, ninety or ninety-five cents per bushel, it goes beyond the reach of the Chinese and Japanese dealers. The standards of living in the Orient are such that only cheap flour finds an extensive market there. The oriental standards of living are thus an important factor in the milling industry of the state of Washington.

When wheat is high in price it is largely shipped to Europe. As has already been indicated, this wheat is not sent by train across the continent and thence to Europe by steamer, but is transported to its destination by ship around Cape Horn. This passage involves a period of three to five months. The western exporter thus sells some three to five months ahead. The eastern exporter can have his price named and sell his wheat at

[1] *Commercial Review*, July, 1907, p. 46.

[2] *Ibid*, July, 1908, pp. 46, 48.

[3] *Ibid.*, July, 1905, p. 46.

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Liverpool within a week or two. The western dealer, however, cannot have his price named, but must act on probabilities with regard to the rise or fall of prices. In other words, he gambles on what the price of wheat is to be three to five months from the time when his wheat is shipped abroad.

This reliance on future prices has made the business of buying and selling wheat a highly speculative one in Washington. Many small, and some moderately large, exporting concerns have been wiped out of existence within a single season by an adverse movement in prices in European markets. At the present time none of the smaller dealers in wheat attempt to export this cereal, the hazard being too great. They either sell to the larger concerns or to the miller, according as the price is high or low. The larger exporting concerns endeavor to reduce expenses as far as possible by owning their own warehouses throughout the state, by chartering European vessels to carry their freight and by maintaining their own agents in foreign ports to sell their products. Wheat, as far as possible, is bought at a price which allows sufficient margin to compensate the dealer for the risk involved. This has, in a measure, been accomplished by coöperation among the larger grain companies.

The speculative character of the business of buying and selling wheat, the large capital involved in the chartering of vessels and in the establishment of foreign agencies, and the oscillations between prosperous and depressed periods in the milling industry, due to fluctuations in prices and the dependence upon Oriental markets, have led to considerable business concentration. The bulk of the wheat bought and sold in the state of Washington is handled by four companies,[1] two of which are controlled by the Portland Flour Mills Company. All four of these companies are exporters, and they virtually control the export trade in wheat of the state. Two of the companies—those controlled by the Portland Flour Mills—are purchasers for the flour-milling company, of which they are practically a

[1] The Puget Sound Warehouse Company; Balfour, Guthrie and Company; Kerr, Gifford and Company, and the Pacific Coast Elevator Company. The first and last of these concerns are controlled by the Portland Flour Mills Company.

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part. Of the 38,200,000 bushels of wheat shipped by rail from eastern Washington to Seattle, Tacoma and Portland, 20,467,147 bushels, according to figures given the writer in pursuance of an investigation made for the purpose of determining the cereal output of the state, were handled by three of these companies.[1] If the fourth company handled 5,000,000 bushels, it can be said that over 25,000,000 bushels, or more than two-thirds of the wheat marketed, were handled by four companies. This proportion would be still larger if account were taken of the wheat hauled in wagons to the mills scattered throughout the state and controlled by the Portland Flour Mills Company.

Owing to the oscillating character of the milling industry there has been a marked tendency for the milling concerns of the state to become sellers and exporters of wheat. The Puget Sound Warehouse Company and the Pacific Coast Elevator Company—both controlled by the Portland Flour Mills Company—are mainly exporters when the price of wheat is high and agents for furnishing wheat for milling purposes when the price is low. In the same way the Centennial Milling Company —one of the two largest milling companies of the state—has, through the purchase of the Tacoma Grain Company, become an exporter of wheat. When the price of wheat is low, practically all the wheat it buys is ground into flour; when the price is high, much of the cereal purchased is exported.

In the milling industry of the state concentration has not proceeded so far as in the wheat-export business. Of the 14,494,000 bushels of wheat ground into flour during the season of 1907–08, 7,914,000 bushels[2] were ground by mills controlled by two companies. However, the remainder was ground by many different mills entirely independent of one another. The smaller of these concerns had only local markets; but several of

[1] The figures are those given by Messrs. E. Noonan, of the Puget Sound Warehouse Company; O. W. Patullo, of Balfour, Guthrie and Company, and Thos. Kerr, of Kerr, Gifford and Company.

[2] Figure based upon amounts given by L. A. Dodge, of the Centennial Milling Company, and by superintendents of mills within Washington controlled by the Portland Flour Mills Company.

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the larger independent mills sent much flour to California, South America and British Columbia.

While concentration has not proceeded so far in the milling industry of the state as in the wheat-export business, there has been a tendency for the large mills of the cities of Seattle, Tacoma and Spokane to gain in output as compared with the mills located in smaller places. The amount of wheat ground into flour in Seattle, Tacoma and Spokane and in the state as a whole for the last five seasons may be indicated as follows:

Season.	Wheat milled in the three cities.	Wheat milled in the state.
1903–04	4,667,874 bushels	8,781,001 bushels
1904–05	6,405,165 "	10,262,207 "
1905–06	9,159,292 "	13,604,623 "
1906–07	12,279,270 "	17,505,064 "
1907–08	9,541,466 "	14,494,294 "

Comparing the seasons 1903–04 and 1907–08 it will be seen that, while production for the state as a whole increased less than seventy per cent, that for the three cities named increased over one hundred per cent. Taking the seasons 1903–04 and 1906–07—leaving out of consideration the year affected by high prices of wheat—it may be observed that, while the amount of wheat ground into flour in Seattle, Tacoma and Spokane increased about one hundred and sixty-five per cent, the increase for the state as a whole was less than one hundred per cent.

The growth of great combinations controlling a large percentage of the trade in wheat and flour has excited much comment among the independent dealers and among the farmers. The fear of ultimate monopoly is widespread; it is a manifestation of the concern felt by the average citizen of the United States as he watches the growth of great consolidations of capital in various lines of industry. This increasing concentration, however, has proceeded without resort to practices which have in many places given undue advantage to large producers and dealers. It was the universal testimony of independent traders, whom the writer consulted, that there is no giving of rebates by the railroads of the state to the large buyers and sellers.

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One of the present state railway commissioners, who was consulted, stated that for some years past no favoritism of any kind has been shown by the railroads of the state to the large shippers as against the smaller dealers. There has been little resort to what is called destructive competition. The price of wheat all over the state has been determined by the price at Tacoma and Seattle and by the railroad rates from the eastern parts of the state to these places.

There have been complaints, however, that the smaller dealers are discriminated against in warehouse charges. The larger companies buying wheat own their warehouses and are therefore not subject to warehouse charges. Many small dealers are compelled to store their grain in the warehouses of the larger companies. During the last year or two the warehouse charges have increased fifty per cent. This increase has unquestionably made the business of the small dealers more uncertain and more difficult. It has given rise to a feeling, which is becoming more widespread, that the warehouse business and the business of buying and selling grain should be distinct, as in California. Under present conditions the larger concerns, by virtue of being warehouse companies, are in a position to hamper the business of the smaller dealers through the instrumentality of increasing warehouse charges. This difficulty, however, affects only those concerns which are so small that they are unable to equip and maintain their own warehouses.

Whether or not the separation of the warehouse business and that of buying and selling grain would improve the position of the independent dealer may be seriously questioned. Most of the wheat raised in Washington is exported, either as wheat or flour; and this necessitates the chartering of vessels and the establishment of agencies in foreign lands. Such equipments are beyond the means of the small dealers, who as a result are generally compelled, after buying grain in eastern Washington, to sell to their larger competitors in western Washington. When the price of wheat is high, they are practically compelled to sell to the four large concerns which virtually control the wheat situation in the state. In a period of low prices there is much greater demand for wheat for milling purposes; and hence

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these dealers can sell to the several independent millers in different parts of the state. As has been indicated, however, there is a growing tendency for the larger milling companies to become exporters of wheat as well as producers of flour; and as these companies are building their own warehouses and buying directly from the farmers the wheat which they need, the small dealers seem destined in any event to give way ultimately to the large concerns engaged in buying and selling wheat and in the manufacture of flour.

Another complaint made by independent dealers is that they are docked more by the State Grain Commission for smut and inferior qualities of wheat handled than are the larger concerns. It is difficult to pass any judgment on the validity of this charge. It may be said, however, that the large buyers have been more careful than many of the independent dealers as regards the quality and grade of the cereals they have purchased. Many of the farmers have found the small buyers more ready to take smutty wheat than the large concerns, and have joined with the small dealers in complaining of the "undue exactions" of the State Grain Commission.

It can be said, in general, that the growing concentration already noted in the business of buying and selling wheat and in the manufacture of flour has been a natural outcome of the unique position of Washington with respect to its markets. It has not been the result of railroad favoritism, of destructive competition nor even of excessive warehouse charges. Large capital has been necessary to charter vessels and to equip and maintain agencies in foreign ports. This of itself would tend to concentrate trade in a few concerns. The speculative character of the business also renders the small dealer less able to meet any adverse movement in prices. One of the leading exporting companies of the state is practically world-wide in its business dealings. Such a concern would naturally be a formidable rival for a company which found the building of adequate warehouses a source of great expense, and which could be wiped out of existence in a single season if it exported its wheat and failed to gauge properly the future movement of prices in European markets. The oscillations in export trade

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and in the manufacture of flour have tended to bring millers and exporters together. The same company can be an exporter of wheat when wheat is high in price and a manufacturer of flour when wheat is low.

It has been suggested that the small buyers and sellers of wheat would be in a position to compete freely with the large companies if the dealers who charter their vessels were regarded in the light of public carriers and subjected to governmental regulations respecting reasonable and unreasonable rates. Small concerns have in the past attempted to export to foreign markets instead of selling to the large business organizations at Tacoma and Seattle; but they have been compelled to send their freight in vessels chartered by the large companies. In these attempts they have been obliged to submit to whatever charges for transportation the larger concerns desired to impose. There can be little doubt that the control which the large exporters and millers have over the transportation of grain to the foreign ports has tended to give these organizations, in so far as they coöperate with one another, a monopoly of the trade. It is difficult to see, however, how vessels chartered in European ports can be subjected to state or national regulations respecting rates of transportation. Aside from political and legal complications, national and international, the obstacles would be at least as great as the nation is now experiencing in bringing pipe-lines, express companies *etc.*, within the scope of the jurisdiction of the Interstate Commerce Commission.

The fear of monopoly control among the farmers of the state is less during the present period of high prices than during a period of low prices, although in a period of high prices the large dealers are enabled to secure a firmer grip upon the situation. When prices are low there are many independent milling companies bidding for wheat—companies which depend upon markets in various parts of the Pacific Coast. When prices are high, the large milling companies which are also exporters of wheat can supply the domestic markets with flour at comparatively low prices, thus taking away a large share of the trade from independents, while recouping themselves from the gains secured through their exports to Europe. It is during a period

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of high prices that a falling-off in the business of the small milling concerns is most noticeable. The farmer, however, is much more tranquil when he can sell at relatively high prices. When prices are low, his protests against monopolistic developments are loud and strong, and these prices are very generally attributed to monopoly control.

Despite the assertions of the so-called independent dealers and the farmers, the control over prices exercised by the large exporters and millers is very limited. The price of wheat in the interior towns has varied regularly with the price at Tacoma and Seattle; and prices at these latter points move up and down with the prices quoted at Chicago and in European cities.

There is, however, one element in the situation which lends force to the complaints often made against the large dealers. This element is related in part to the several kinds of wheat raised and the markets which the state serves. It has already been noted that a large proportion of the flour produced in Washington is exported to the Orient. As price is an important determinant of the amount of flour consumed in that part of the world, there has grown up a marked tendency to cultivate those varieties of wheat which are prolific in growth but low in grade. The oriental is not particular what kind of flour he uses so long as it is cheap. This has led to the manufacture and exportation of cheap grades of flour, the better grades being consumed at home or sent to California or British Columbia.

Warehousemen in Washington generally classify the wheat they handle into three varieties: bluestem, club and red. Bluestem is the best variety for milling purposes of any wheat raised within the state. Club is an inferior variety from which much of the flour sent to the Orient is made. Under the head of red are included several kinds of wheat, some high and some low in grade. The most important of these are Turkey red, Jones's fife and red Russian. The first and third of these varieties represent respectively extremes of high-grade and low-grade wheat. On the average Jones's fife is inferior to club. It is used extensively in the manufacture of flour for the oriental markets.

These several kinds of wheat usually sell for prices varying

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with their gluten contents—or their value for milling purposes. Much, however, of the wheat sold in the state as bluestem is not of bluestem grade, but belongs to a variety closely resembling the bluestem in external appearance and much inferior to it in gluten contents. This inferior wheat is known as forty-fold. When first introduced, the flour manufactured from this variety was exported to Asia and sold at low prices. On account of its close external resemblance to bluestem, however, it has recently been mixed with this superior wheat and sold in European and other foreign markets as bluestem. This practice has given the forty-fold variety what might be called an artificial value—*i. e.*, a value disproportionate to its worth for milling purposes. This wheat is being extensively cultivated in the extreme eastern part of the state; and it is in connection with this variety that farmers have made many complaints against the large buyers.

In order to understand this phase of the situation it may be well to note the amount of wet gluten in the varieties of wheat mentioned. The amount of wet gluten which a flour will yield is commonly accepted as the best measure of the value of any wheat for milling purposes. Other things, such as the quality of the gluten, the color of the flour, the ability of the flour to absorb and hold the proper amount of moisture in baking, are to be considered in judging the quality of the wheat. But generally those wheats which produce "strong" flour, *i. e.*, flour which contains comparatively large amounts of gluten-producing ingredients, are likely to be good in other qualities. The average percentages of gluten found by the director[1] of the state experiment station at Pullman in the varieties of wheat considered are as follows:

VARIETIES.	WET GLUTEN.	VARIETIES.	WET GLUTEN.
Bluestem	30.29 per cent	Forty-fold	23.68 per cent
Turkey red	29.94 "	Fife	21.22 "
Little club	24.27 "	Red Russian	19.98 "

The difference in price between bluestem, the best wheat for milling purposes, and red Russian, the poorest, varies from

[1] Professor R. W. Thatcher in *Farmer*, November 1, 1906.

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eight to ten cents per bushel. Club generally sells from four to five cents less per bushel than bluestem. Forty-fold, which is inferior to club both in the percentage and in the quality of its gluten contents, generally commands a price from one to three cents more a bushel than club, and occasionally as much as bluestem. This greater value is entirely due to its external resemblance to the superior variety. It is this close resemblance to bluestem that has led to considerable mixing of the two varieties; and such blends are always sold as bluestem.

It is contended by the farmers of the state and by the small dealers that, in selling forty-fold wheat to the large exporters and millers of the state, they receive for their grain forty-fold prices, while the big companies mix this variety with bluestem and receive for it bluestem prices. That this practice is pursued is generally admitted. Against this practice both the farmer and the small dealer have protested, not because it is a fraud upon the public, but because a variety sold as bluestem should be purchased as bluestem. As has been indicated, however, forty-fold wheat commands a higher price in the market than its gluten contents would justify; and this higher price does represent a sharing with the farmer of the fruits of a transaction in which the public pays more for a commodity than it is worth.

On the whole it may be said that the wheat situation as it exists in Washington to-day is almost wholly due to the unique position of the state with regard to its markets in Europe and in the Orient. The foreign trade has in large measure caused a marked development in the direction of industrial concentration and has even influenced the varieties of wheat produced. How far this development will continue it is impossible to say. Present indications point to a further movement in the direction already pointed out in this article. This is not saying that the ultimate situation will be a complete monopolization of the wheat and flour trade of the state; but, unless conditions radically change, only concerns with large capital will be able to market their commodities to advantage.

A. BERGLUND.

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CAPITAL AND INTEREST

HAVING recently replied to a critic who objects that my books, while correct from the standpoint of business economy, do not pay sufficient attention to social utilities, I must now face about to meet criticism from precisely the opposite quarter. Professor Veblen's objections[1] are that I give undue attention to utility, enjoyable income, livelihood and the "calculus of pleasure and pain," instead of to "pecuniary concepts," which, and which alone, can, in his opinion, serve as a basis for the study of modern business conditions. The first critic objects that as political economist I should not confine myself to the problems of business, but should include those of welfare; the second, that I should not specifically include the problems of welfare, but should confine myself to those of business!

The opposite character of these criticisms would suggest interesting questions as to how authors ought to be guided in distributing emphasis over the topics of which they treat. Experience has shown that progress is made most rapidly in science by the writing of monographs devoted to special parts of the wide field of human knowledge. There will always necessarily be some disagreement as to what may best be covered in any specific monograph. It must be an advantage rather than otherwise that various minds look at the field from various angles, and that each selects for himself particular aspects for special study. While there is room for difference of opinion as to the wisdom of each choice, I hold it to be a mistake—and a mistake indicative of the undeveloped state of our science—that there should exist among economists a spirit of intolerance, leading critics not merely to prefer certain points of view but to maintain that any other point of view is inadmissible. It would seem that we have not advanced much in this respect beyond the time when Jevons wrote

> The present chaotic state of Economics arises from the confusing together of several branches of Knowledge. Subdivision is the remedy * * * In fact, the whole subject is so extensive, intricate and diverse, that it is absurd to suppose it can be treated in any single book or in any single manner.[2]

[1] "Fisher's Capital and Income," POLITICAL SCIENCE QUARTERLY, vol. xxiii, p. 112, and "Fisher's The Rate of Interest," *ibid.*, vol. xxiv, p. 296.

[2] The Theory of Political Economy (3rd edition, London, Macmillan, 1888), p. xv.

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The most recent history of economics voices the same view:

> Nous voyons ensuite s'opérer une segmentation de la science économique en sciences distinctes qui tendent à devenir de plus en plus autonomes. Seulement cette séparation n'implique plus lutte, mais simple division du travail.[1]

With these views, Professor Veblen would, I judge, take issue. Like some other economists, he is not content with following his own bent and method, but wishes to prescribe limits and to mark out paths for others; and like these other economists he makes errors chiefly in his negations, not in his affirmations. Having judged any work by his criteria and found it wanting, he seems forthwith to dismiss it *in toto*, closing his eyes to particulars. All other reviews I have yet encountered are favorable to the extent of granting the validity of my main contention, but Professor Veblen finds evidences of error everywhere. He rejects my entire presentation because I have not regarded the subject from his viewpoint and, in consequence, have put different details in the background and foreground respectively. In the last of his two articles Professor Veblen states that the study of the "rate of interest" must be confined to the money market, and objects to the extension of the concept which is made to apply to discounting future benefits in general. Among his expressions on this point we find:

> Interest is a pecuniary concept having no validity (except by force of an ambiguity) outside of the pecuniary relations of the business community, and to construe it in other, presumably more elementary, terms is to explain it away by dissolving it into the elements out of which it is remotely derived, or rather to which it is presumed to be remotely related.

Such statements will, I believe, to most readers carry their own refutation. Without such analysis, we should revert to the superficial mercantilism with which economics began. Instead of restricting economic studies in any one direction, instead of prescribing rigid metes and bounds, why not encourage every student who has the slightest spark of the explorer's spirit to follow out any chosen chain of causation *ad libitum*, even to the extent of studying, as did Jevons, the possible effect of sunspots on economic crises?

But, while Professor Veblen objects to my extending the study of interest in one direction, he at the same time objects to my failing to

[1] Charles Gide et Charles Rist, Histoire des doctrines économiques (Paris, 1909), p. 734.

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extend it in another. He points out that in a modern market the rate of interest is affected by the degree of development of economic institutions, and that any study of the rate of interest should include a study of the historical development of the institutions of private property and industrial organization, particularly the organization of the money market. Such a study is certainly legitimate, but forms no necessary part of the field chosen for my book, which had to do primarily with analysis and only secondarily with history.

As another example of my critic's desire to narrow many economic concepts to their money manifestation may be mentioned his attitude toward the concept of income. He maintains that, "As a business proposition, nothing that cannot be rated in terms of money income is to be accounted income at all; which is the same as saying that no definition which goes beyond or behind the pecuniary concept can be a serviceable definition of income for modern use." My own statement would be that no definition which does *not* go beyond or behind the pecuniary concept (or concepts) can be a serviceable definition for modern use, especially use in economic analysis. Would Professor Veblen wipe out of economic literature all study—analysis and statistics alike—of, for instance, "real" wages as distinct from pecuniary or nominal wages? The use of the term "real" in contradistinction to "pecuniary" indicates the belief of economists that pecuniary income, like pecuniary concepts in general, is relatively superficial.

If Professor Veblen wishes, for the purpose of classification, to mark off a concept of money income, he is of course at liberty to do so. This, however, would seem to be inconsistent with the views expressed in his first article. Here he objects to my method because he believes it is classification merely for classification's sake. In the second article, instead of branding me as a "taxonomist," he confines himself to calling me a "hedonist." If I were compelled to accept either of these epithets, I should be inclined to argue that no one could logically merit both. Since, however, Professor Veblen has apparently overlooked the fact that I had expressly disclaimed being either an advocate of classification (Professor Veblen's "taxonomy") or an advocate of measuring utility in terms of pleasure and pain (Professor Veblen's "hedonistic calculus"), it may be worth while to restate here two distinctions which seem to me fundamental. One is the distinction between *classification* and *analysis*; the other, the distinction between *pleasure* and *desire*.

So far as the first distinction is concerned, I believe it will go far to show that, however else we may disagree, Professor Veblen and I sub-

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stantially agree on the futility of mere classification. I even venture to think that, had Professor Veblen not mistaken me for a classifier, he would have maintained a different attitude throughout his first and perhaps also his second review. It was with the purpose of preventing any careless reader from making the very misconstruction of my attitude toward classification which Professor Veblen has made that I inserted the following three sentences immediately before my very first classification table:

> It scarcely needs to be stated that the various classes are not always absolutely distinct. Like all classes of concrete things, they merge imperceptibly from one into another. For this reason the classification is of little importance except to give a bird's-eye view of economic science. In fact, the classification of concrete things is seldom of paramount importance in scientific study. Not classification, but analysis, solves scientific problems.[1]

I even took pains to append a footnote, so that if the reader cared to look further into my views on methodology he might find them expressed in *The Economic Journal* (December, 1896, page 516) and in the *Quarterly Journal of Economics* (March, 1904). In 1896 I gave as one reason for rejecting the ordinary definitions of capital that they have all "been erected on the unquestioned assumption that the problem was one in the *classification* of wealth. . . . This, I believe, is the faulty foundation which has weakened all structures built upon it."[2] And again, referring to the distinction between the pseudo physics of the ancients and modern analytical physics, I stated:

> Just as the ancients regarded solids, liquids and gases as different *kinds* of matter (earth, water, air), instead of different *states*, so economists have thought of capital and income as different kinds of *commodities*, instead of different aspects of commodity in time. In much the same way, popular usage classifies bodies of water into lakes and rivers. . . . Physicists, however, remind us that the distinction between lakes and rivers is merely one of degree, and that behind this useful but arbitrary classification, lies the real scientific distinction between "gallons" and "gallons per second," a distinction which applies equally to Lake Superior and to Niagara Falls.[3]

Classification is a useful process mnemonically. It serves the same purpose as the division of a book into chapters; but it has no place as

[1] Nature of Capital and Income (New York, Macmillan, 1906), p. 7.

[2] "What is Capital?" *The Economic Journal*, December, 1896, pp. 513, 514.

[3] *Ibid.*, p. 516.

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a scientific process, for it yields no important conclusions. I agree heartily with Professor Veblen's opinions on this point. His misunderstanding of my view may be explained by the fact that the tables of classification which were included in my books stand out typographically and catch the eye of a hasty reader. An attentive reader could scarcely fail to notice that, except in the introductory chapters, the books are almost devoid of classificatory ideas or allusions. Professor Veblen has therefore made a mistake in his own scheme of classification when he attempts to classify me as a classifier. He writes:

> *The Nature of Capital and Income* is of that class of books that have kept the gild of theoretical economists content to do nothing toward "the increase and diffusion of knowledge" during the past quarter of a century. . . . What it lacks is the breath of life; and this lack it shares with the many theoretical productions of the Austrian diversion as well as of the economists of more strictly classical antecedents.[1]

Herbert Spencer once complained bitterly of the injustice of the criticisms of his system of philosophy, maintaining that the majority of his critics had fastened their attention on his introductory chapters on metaphysics, which were not vital to his work and were written merely to clear the way of such misunderstandings as, without these chapters, might naturally arise in the reader's mind. Summarily to reject a book on economics because it contains non-essential definitions to which the reader cannot subscribe is very much like objecting to the conclusions of a book on physics because the reader does not approve of the author's definition of matter on the first page. Physicists, like metaphysicians, have disputed over the definition of matter, but they all recognize that the science of physics is independent of such formulation. The analogue in economics is the definition of wealth, which in its broadest sense I defined in a manner to include man himself. From this definition Professor Veblen dissents; but I took pains to state that the term wealth could also be well defined in a restricted sense as "material objects owned by man and external to the owner."[2] What breadth of classification we employ in defining wealth is of little consequence and is not worth the attention which has been devoted to it. The important point is the relation between a stock of wealth (whatever is included) and the flow of its services.[3]

[1] POLITICAL SCIENCE QUARTERLY, vol. xxiii, p. 112.

[2] The Nature of Capital and Income, p. 5.

[3] See "Senses of Capital," *Economic Journal*, June, 1897, p. 201.

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But if Professor Veblen's criticisms are directed against *analysis* as well as classification, I am ready to join issue. He himself draws no such distinction; yet the distinction is vital. It separates definitions which are based on classification from those which are based on analysis. These are, respectively, definitions of *things* and definitions of *relations* between things. The former relate to the concrete; the latter to the abstract. The former are useful to the user of language; the latter to the student of science. Examples of the first category (concrete or classificatory) are definitions of a house, a chair, land, money; of the second category (abstract or analytical) are definitions of an average, a circle, momentum, coëfficient of correlation, velocity of circulation of money, balance of trade. In economic analysis, as in any other branch of science, the leading rôle must be played by such concepts of relation.

The history of science shows, first, that no science is safe without clear and fixed definitions and, second, that the more the science has developed the less emphasis will be put on the concrete or classificatory definitions and the more on the abstract or analytical. The Baconian method, as John Rae pointed out, is not merely historical description or statement of concrete fact. Facts enter as tests of proposed "laws," but laws are formulated in terms of suitable abstract concepts. As I have stated elsewhere:

> In fact, Bacon makes a distinction between what he calls the popular and inductive method, or what may be preferably called, following the example of John Rae, the *systematic* and the *scientific*. The two are commonly confused, but are entirely distinct. "System" consists in classifying phenomena; "science" consists in discovering the laws to which they conform. System explains phenomena by means of what is common and familiar; science explains them by what is simple, however recondite. System is exemplified in such descriptive studies as grammar, descriptive geography and history; science is exemplified by such analytical studies as mathematics, physics and, latterly, biology. The classifier or system-maker is content with generalization of facts. These express the *usual* order of events, for instance, that the sun rises once a day. They do not express the reason or principle. The difference between system and science is the difference between a general fact and a necessary truth, between *rules* and *laws*. Exceptions to rules do not destroy them as rules; in fact, we say, "the exception *proves* the rule." This, however, is not true of laws. A "law" which has an exception is no law at all.
>
> Many studies which are now scientific had their origin in what was originally systematic. The predecessors of the modern physicists classified bodies into "light" and "heavy." Iron, they maintained, is heavy and

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therefore falls; fire is not heavy and therefore rises. How different is this obsolete method of treating the subject from our modern analytic notion of gravity, or rate of increase of velocity, by means of which are explained both the falling of iron and the rising of "fire."

Similarly, the prototype of biology was "natural history" and consisted chiefly in the mere classification of animals and plants into species, genera *etc.* Modern biology has supplanted such elaborate classification by introducing, through Darwin, the analytical ideas of heredity, variation and selection, and in this way the descriptive study of natural history has been converted into the true science of biology.[1]

Many economists have gone astray in respect to the true function of analysis. The literature on "methodology" is full of misconceptions of analysis similar to that of which Professor Veblen seems to be guilty. In particular the historical school of Roscher had no real understanding of the Baconian logic, which they professed to emulate. Otherwise they would have been no more opposed to theoretical economics than the laboratory experimenter is opposed to "rational mechanics." As Hume said in a passage which John Rae uses as the motto for his book on *Capital*, "Our speculations can scarce ever be too fine, provided they be just."

One of the best examples of Professor Veblen's confusion between classification and analysis appears when he accuses me of distinguishing "savings" and "income" simply in order to have two mutually exclusive classes. Professor Veblen says:

> The two ideas—"income" and "increase of capital"—are by no means mutually exclusive in the current usage; and ordinarily, so long as the terms are taken in their current (pecuniary) meaning, such an increase of capital would unhesitatingly be rated as income to the owner. The need of making "income" and "increase of capital" mutually exclusive categories is a need incident to a mechanically drawn scheme of classification, and it disappears as soon as classification for classification's sake is given up.

It would be hard to conceive of a criticism more *mal à propos*. Had I been making classification for classification's sake, I might have been tempted to include savings in income, for, as Professor Veblen indicates, there is fully as much sanction for such usage as for the opposite. But "savings" and "income" are not mere sub-heads under some general class of objects. They are as widely different in kind as the analytical notions of velocity and energy, and quite as much in need of

[1] "Economics as a Science," *Science*, August 31, 1906, pp. 257-261.

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careful handling if confusions are to be avoided and our economic accountings are to be self-consistent. Savings must be treated as capital and not as income simply because the mathematical relations of capitalization make them thus and not otherwise. Future capital may be discounted as well as future income may be discounted, but the capital is itself the discounted value of income. Consequently when we discount capital we rediscount income. The former may be discounted *instead* of the latter but not in *addition* to the latter. Hence savings can be discounted only as capital, that is, instead of but not in addition to its own income. In consequence of overlooking this fact serious confusions of thought arise.[1] The questions involved are not questions of terminology at all but of inherent relation. We may change the terminology as we please; the relations will always reappear under new names.

Let us take a case of Professor Veblen's "pecuniary" income, consisting of a definite series of money receipts, but of varying amounts. The capitalization will vary from time to time, but the variations of this capitalized value are not themselves discounted to form part of the capitalization. The principles of capitalizing income are immutable principles of relationship, like any other actuarial principles of computing annuities or insurance.

These general relations are entirely independent of particular valuations or applications. Professor Veblen here as elsewhere falls into the error which, as Edgeworth[2] and Cournot have pointed out, has been so often committed by those who object to mathematical treatment because they imagine it assumes that economic magnitudes must be exactly measurable. In speaking of the summation of capital,[3] Professor Veblen points out difficulties in the way "of arriving . . . at such a definite and stable determination of capital value as will serve the needs of 'capital summation' as expounded by Mr. Fisher." Professor Veblen does not make it clear why he thinks that the principles of "capital summation," which I endeavored to expound, required a definite and stable determination of capital value. Were this true, any principles of adding capital would be invalidated. So far from maintaining that capital had a definite and stable value or that such a

[1] See the writer's "Are Savings Income," Publications of the American Economic Association, vol. ix, no. 1, April, 1908.

[2] See his Mathematical Psychics (London, Paul, 1881), p. 2, especially. "It is necessary to realize that mathematical reasoning is not, as commonly supposed, limited to subjects where numerical data are attainable."

[3] POLITICAL SCIENCE QUARTERLY, vol. xxiii, pp. 126, 127.

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definite stability was essential to the theory of capital accounts, I both maintained and stated the precise opposite, devoting a special section[1] to the subject. I tried to make it clear that the value of all goods was generally a vague and ambiguous magnitude; that there were asking prices, bidding prices, prices of sale, valuations for purposes of taxation, valuations for purposes of insurance *etc.* But however vague or ambiguous any particular valuation may be, the principles of capital summation are in no wise affected thereby. Thus there may be more than one answer, or only a vague answer, to the question, "What is the value of the assets of Mr. Carnegie?" but this indeterminateness of value has nothing whatever to do with the principles of adding to or subtracting from those assets some other value. Whatever sum Mr. Carnegie is worth, it is certainly lessened one dollar by a debt of one dollar, even though the total is unknown or unascertainable within ten millions of dollars.

The laws of capital summation, like the laws of arithmetic, evidently refer to *relations* between assets and liabilities, and they are entirely independent of the question as to the value which those assets and liabilities may or may not possess.

Professor Veblen overlooks another distinction which I tried to draw in reference to the psychologic side of economic science. Here also I agree with him on the general thesis that the "calculus of pleasure and pain" has been terribly misused by theoretical economists. Economists have burdened themselves with a crude psychology. It is unnecessary for economists to enter within the field of psychology,[2] but it is necessary to acknowledge contact with that field. The point of contact is human *desire.* It is quite impossible for any economic theory to be completely worked out without some place in the analysis for human desires. Many economists have confused pleasure and pain with desire and aversion. If Professor Veblen has not made this confusion, he has at any rate been greatly mistaken in the views he has ascribed to me. He says: "The day when Bentham's conception of economic life was serviceable for the purposes of contemporary science lies about one hundred years back, and Mr. Fisher's reduction of 'income' to 'psychic income' is late by that much." He could scarcely have written thus had he comprehended my own views. As early as 1892 I

[1] Nature of Capital and Income, pp. 15–17.

[2] For instance, in "Mathematical Investigations in the Theory of Value and Prices," Transactions of the Connecticut Academy of Arts and Sciences, vol. ix, July, 1892, page 23; also The Nature of Capital and Income, pages 42, 43.

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wrote: "'Utility' is the heritage of Bentham and his theory of pleasures and pains. For us his *word* is the more acceptable, the less it is entangled with his *theory*."[1] And again:

> This foisting of Psychology on Economics seems to me inappropriate and vicious . . . Gossen and Jevons appeared to regard the "calculus of Pleasure and Pain" as part of the profundity of their theory. They doubtless saw no escape from its use. The result has been that "mathematics" has been blamed for "restoring the metaphysical entities previously discarded."[2]

In short the view I have upheld is that, while we must correct wrong psychological analyses, we cannot dispense with psychologic concepts altogether. Least of all can we get along by means of "pecuniary concepts." Nothing has led to more errors than fixing attention on the money surface of things and neglecting the psychologic forces beneath. Money, while of the greatest service in economic practice, is and always has been the chief stumbling-block in economic theory.

The impression which Professor Veblen's two reviews have made on my mind is that he, like Leslie, is influenced by a kind of phobia against certain schools and methods. Having classified (or misclassified) me in a particular "school," he seems to make his attack almost indiscriminately. His criticisms are almost all generalities on methodology and concepts, and for the most part they disregard the special conclusions which differentiate my books from others on his *index expurgatorius*.

I would especially call attention to the fact that nowhere does he refer to the main point of *The Rate of Interest*, namely, the rôle played by the "time shape of the income stream" and the considerations which go with it, which take the place in my treatment of the "roundabout process" of Böhm-Bawerk. Instead he inveighs against those theoretical economists who find no place for any technological element and his review would give the impression to many readers that I am one of these. My book was written largely to show that Böhm-Bawerk's handling of the technological side in his famous "roundabout process" must be discarded and replaced by the proper use of the fact that each individual has open to him a number of optional income streams differing in size, composition, certainty and time-shape. In the Appendix the effects of these technological limitations upon the

[1] "Mathematical Investigations in the Theory of Value and Prices," Transactions of the Connecticut Academy of Arts and Sciences, 1892, p. 23.

[2] *Ibid.*, p. 5.

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rate of interest were expressed both analytically and graphically by the curve "WZ," and I stated:

> So much space has been devoted to stating these six conditions in mathematical form, because, to those conversant with the mathematical tongue, the algebraic statement will show more definitely and clearly than is otherwise possible the determinateness of the problem, owing to the equality between the number of equations and the number of unknowns: while the geometrical method enables them to form a mental picture, clearer than would otherwise be possible, of the various factors at work, and especially of the manner in which the objective or "technical" conditions, as represented by WZ, coöperate with the subjective conditions which influence the rate of interest. It was, in fact, only through the geometrical representation that the writer was first enabled to grasp the significance of the "effective range of choice" in its general bearings. If the rôle of the curve WZ is grasped, the most difficult part of the theory of interest is mastered [page 415].

Professor Veblen seems to have read the chapters on statistical verification chiefly with the idea of ascertaining whether or not they bore on the theorem that the rate of interest was equal to the subjective rate of preference for present over future goods. It is true that some of the statistical material is given to illustrate the subjective side of the theory, but the main object of these chapters is to bear on the objective side of the theory, which, as the newest part, seemed most likely to be challenged. Professor Veblen in his review has not challenged it. He has not even mentioned it. Much to my surprise, however, he has challenged the subjective side. As I said in the preface of *The Rate of Interest:*

> The difficult problem is not whether the rate of interest *is* an agio, or premium, for of this there can be no question, but upon what does that agio depend, and in what manner? Does it depend, for instance, on the volume of money, the amount of capital, the productivity of capital, the "superior productivity of roundabout processes," the labor of the capitalist, the helplessness of the laborer, or upon some other condition? The solution here offered is that the rate of interest depends on the character of the income-stream, its size, composition, probability and, above all, its distribution in time. It might be called a theory of *prospective provision of income.*

Professor Veblen says: "Chapter xiv . . . goes far to disprove that the rate of interest is a matter of the preference for present over future income, taking 'income' in Mr. Fisher's sense of the term." For this

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statement the only evidence which Professor Veblen offers is to cite my example of the farmer who in the fall needs to borrow. Here again I seem to have failed to make my meaning clear to Professor Veblen. It was that in the fall the farmer's real income—that is, his livelihood or "living"—tends to be cut down to the quick by the necessity of paying the wages of harvesting *etc.*, while he has in prospect a plenteous living as soon as his crops can be sold and the proceeds spent. It is true that his wheat crop can be made to yield immediate bread, but the "daily bread" of the farmer includes much besides bread—other food, clothing, comforts and amusements of various kinds. Certainly there is no more typical case of a scarcity of present enjoyable income and a prospect of plentiful future enjoyable income than a farmer just on the point of harvesting his crops. He is at that time relatively pinched for his livelihood, but looks forward to a time, a few weeks or months later, when he will possess the necessaries, comforts and amusements of life in relative abundance. The "time-shape of his income-stream" is an increasing one. He is in a position of a man in present need but with great expectations. That the causation of the farmer's loans is the relative subjective need of the farmer, due to these objective technical conditions of his income stream, is obvious. But, as if to make the misconstruction complete, Professor Veblen states:

> But the farmer's crops are his "income" in the case assumed, and when his income has come in, at this springtime of his income stream, his preference for present over future goods should logically be at its lowest, and, indeed, there need be little question but such is the case.

It seems scarcely conceivable that anyone has read both *The Nature of Capital and Income* and *The Rate of Interest* and concluded that in the last analysis the farmer's crops are his income. On the contrary, they are only the first link in the chain of "interactions" of which the last link is the enjoyable income for the farmer. In connection with this example, Professor Veblen repeats his faith in the adequacy of pecuniary concepts:

> Farming is a business venture in modern times, and the end of business is gain in terms of money. The cycle of business enterprise closes with a sale, a conversion of "income" into money values, not conversely, and the farmer is under more or less pecuniary pressure to bring this pecuniary cycle to a close.

We observe here as elsewhere a curious refusal to see the chief factors

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in the case. We need not dwell on the fact that the farmer, even to-day, is not merely a producer for money, but to some extent consumes his own products without the intervention of money. The important point is another: whether or not money is used, the money of itself has no force except as it represents other things, and these other things in the last analysis have no force except as representing enjoyable income. If they represent capital, this is itself the representative of future enjoyable income. What can Professor Veblen mean by "pecuniary pressure" except the psychological preference for present over future satisfaction to which he would shut his eyes?

Again, Professor Veblen seems to misconceive my attitude toward the older school of *laissez faire*. My views on this subject[1] are largely based on John Rae's stimulating book,[2] and are not unlike those of Professor Veblen.[3]

There are doubtless many points of difference between us, but they are not in general those which Professor Veblen has mentioned. Unless unwittingly I do him injustice, his preconceptions have led him to misconceive my method and conclusions and to confuse them with methods and conclusions which we both oppose.

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[1] See my "Why has the Doctrine of Laissez Faire been Abandoned?" *Science*, vol. xxv, no. 627 (January 4, 1907), pages 18–27.

[2] Recently reprinted under the title: The Sociological Theory of Capital (New York, Macmillan, 1905).

[3] In his Theory of the Leisure Class (New York, Macmillan, 1905).

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REVIEWS

Laws of War between Belligerents, a History and Commentary. By Percy Bordwell. Chicago, Callaghan and Company, 1908.—xxiv, 374 pp.

Friends of international peace, in their disappointment at the failure of The Hague Conferences to agree on any limitation to armaments or on the establishment of a real court of arbitration, have been disposed to criticize the work of these conferences as given over merely to making more effective the evils of war. No one can read the scholarly work now before us without appreciating the important results attained by the military and naval representatives at The Hague—results which in time of international stress are bound to have a most civilizing influence upon man's baser passion. Mr. Bordwell notes that "the predominance of the military element among the members" of the Brussels Conference in 1874 gave rise to a fear, at that time, that the results would mark a "retrogression rather than an advancement." But he observes that time has shown that it was "fortunate" that the Declarations of the Conference were "so largely the work of military men," because "the danger of hostility to The Hague Regulations is therefore now avoided by the fact that military men had so large a share in their creation." He believes that their humanitarian spirit may be trusted in the future to take the same leading part in the development of the laws of war.

Those who are inclined to pessimism should consider the earlier relation of enemies when the conquered were given no quarter, or else were reduced to slavery, and when the property of the vanquished was treated as *res nullius*. In the first half of the volume Mr. Bordwell traces rapidly the changes which have taken place in the relation of enemies: how slavery was succeeded by ransom and ransom by the exchange of prisoners; how heralds became unnecessary to the declaration of war when embassies were established; how, after the discovery of the new world and the struggle for maritime trade and territory was begun, sequestration of property and the issuance of general letters of mark and reprisal, prior to the declaration of war, tended to make formal declarations superfluous; how contributions were gradually substituted for pillage because princes, seeking to increase their domain,

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were solicitous not to embitter the conquered masses and, also, because the anarchy of pillage demoralized their troops and interfered with their effective control. He shows how, with the increase in the size of armaments, improvements in military science and the growth of national sentiment, the modern doctrine of military occupation naturally supplanted the old doctrine of conquest and postliminium; how the objective of the successful enemy was changed from the seizure of small coveted provinces to striking directly for his opponent's capital and source of power. Following the declaration of Paris of 1856, the author takes account of the important practices and rules which arose for consideration in the succeeding wars and international congresses. These practices and rules are again considered in the commentary on the laws of war which composes the second half of his book.

Mr. Bordwell does not indicate his attitude as to the immunity of enemy property at sea further than to say that the "solution of the question would seem to be" to consider that war gives a right to confiscate but does not of itself confiscate enemy property at sea, thus leaving it to the proper political authority to announce its intention at the beginning of war. In the same way Mr. Bordwell considers that (page 203)

> it is desirable that the view that war itself does not put an end to commercial intercourse, but that its illegality depends on its interdiction by the political authorities, should find even wider recognition than it has; for when once the stoppage of traffic requires positive action on the part of the authorities a long step ahead has been taken in securing a continuation of the ordinary conditions of peace.

The author does not consider "unreasonable" the drafting of domiciled aliens to repel invasion, especially after notice and opportunity to leave the country have been given. He considers the dissenting opinion of Chief Justice Marshall in the case of the "Venus" was "more reasonable" than the prevailing opinion, and states that it was "expressly approved" in Nigel Gold Mining Company, Ltd., *v.* Hoade, decided by the King's Bench in 1901. As to insurance against war risks his opinion is that the decisions of the mining companies' cases, arising from the seizures by Transvaal, were "eminently sound, for the rule is that an insurance company shall not nullify the act of its own government, not that it shall not nullify the act of the enemy."

The author considers that the relation of a military occupant to the occupied territory is (page 233) "to a certain degree analogous to that of a sovereign," but (page 299) "this authority to govern, however, is

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not sovereignty." As to the conversion of merchantmen into ships of war on the high seas, he sees no objection so far as "the general principles" are concerned. He refers at various points to the conservative tendency of courts of law, and says, speaking of the humanitarian influence which has improved war practices, that they are "perhaps the last of all to feel this quickening of the public conscience." For this reason he says it is desirable "that many of the incidents of war, such as commercial intercourse of the enemy, should be more fully placed in the hands of the political authorities, who are more responsive to public opinion." He intimates that The Hague Conference regarded "spies generally as scamps who deserve the treatment they get," but omits to point out, as does Mr. Westlake, "that spying in general is not less honorable than fighting, and the punishment of it is to be regarded as having no other motive or justification than that of deterring others."

Mr. Bordwell has written in an impartial spirit. At times he has briefly noted the economic and social changes which have influenced the development of a law of war. But he omits to mention the influence of the Church as one of those which operated to cause a discontinuance of the enslaving of the defeated enemy. The author has at several points given, as might be expected from a lawyer, careful attention to terminology, pointing out in some instances inaccurate English translations of the French text of the conventions. In the opinions which he has vouchsafed to give on various points he has taken a position that seems sound and discriminating. Thus after noting the indefiniteness of the sanctions of the laws of war he says, "It is above all necessary that the rules should not be arbitrary or technical, but that they should be simple and reasonable, and thus appeal immediately to the minds and wills of the military commanders to whom their observance is entrusted." And several times he emphasizes the ineffectiveness and folly of guerilla fighting, of the inflicting of general penalties for acts for which a community cannot be regarded as collectively responsible, and of the indiscriminate burning of homes and villages in an effort to reduce an enemy. Speaking of this last he says, "If there is one lesson taught by the Franco-German war and the South African war alike, it is that such a practice, instead of curing evils, makes them tenfold more virulent." He omits to give a table of the cases to which he refers, but does include a list of the authorities consulted. The work is well organized, and is written in a clear, interesting style.

GEORGE WINFIELD SCOTT.

COLUMBIA UNIVERSITY.

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Cases on the Conflict of Laws. BY ERNEST G. LORENZEN. St. Paul, West Publishing Company, 1909.—xxi, 784 pp.

Although claiming to be no more than a case book, it is apparent even to the casual reader that the present work is the result of more labor than the mere compilation and arrangement of leading cases upon the conflict of laws. In addition to the selection of common-law material, the editor has supplemented each topic with a succinct statement, citing authorities, of the norms recognized in France, Germany and Italy, for solving conflicts of law. This comparative material is interesting in itself. In its present environment, however, we judge that it is intended to bear directly upon the particular English or American doctrines illustrated in the body of the work, because it enables the teacher to give emphasis by contrast. It is a background of Continental jurisprudence by which the Anglo-American rule is often brought into higher light.

The plan is useful in this branch of law at least, as the problems with which it deals are often international in character. The viewpoint adopted in a federated state is too often inclined to be merely inter-jurisdictional. It is for this reason that our courts are sometimes inconsiderate of the demands of international commerce and intercourse. Thus in a recent case in the New York Court of Appeals, (Amsinck *v.* Rogers) reprinted in the present collection (page 427) the argument that the decision would "impose much trouble and responsibility upon those who are held for the proper demand and protest of paper in foreign countries where commercial laws and usages differ from our own" was not regarded as contributing to the "balance of weight," "even if it is to be considered" (page 432). Aside from the correctness of the decision, which has been much criticized, we do not think the attitude of the court as expressed in its *dicta* is commendable in the highest tribunal of a cosmopolitan state. We are informed that the decision did in fact cause a serious uneasiness at the time among foreign bankers with American connections.

In this branch of the law, perhaps more than in any other of a private law character, it is desirable that the results should not merely be a stereotype of former decisions capable of the same classification, but that while adhering to the established general principles, there should be a conscious development along lines which will harmonize with commercial needs and international intercourse. English writers, such as Westlake and Foote, have consistently followed this course, but in the United States there has been little or no deviation from a production of treatises that are mainly encyclopædic.

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The classification adopted in the present book follows that of the Continental treatises. The first part deals with general topics, such as the nature of the subject, the extra-territorial effect of penal laws, conflicts in procedure, execution of foreign judgments, domicile, capacity and form. The second part follows the five-fold classification of the Roman systems and treats of particular conflicts in respect of property, obligations, family relations and inheritance. The law of persons finds its place in the first part of the book and is supplanted in the second part by a chapter dealing with foreign administrations. We think that this is at the cost of symmetry, as the former topic is out of place and the latter could very well have been included under procedure.

Many of the cases are necessarily the same as those to be found in earlier collections. The editor has done well in omitting many that have been overruled, and others that are obsolete. The number of important cases contained in the collection decided within the past decade and therefore not to be found in the earlier collections is surprisingly large, a fact in itself indicating the increasing importance of this branch of jurisprudence. Cases such as Haddock *v.* Haddock (Supreme Court, 1905) in this country and Ogden *v.* Ogden (Court of Appeal, 1907) in England are, and unless statutory changes are made doubtless ever will be, regarded as leading authorities upon conflicts in respect of the law of marriage and divorce. The former involved the validity of a divorce decree granted in the state of domicil of one of the parties, and the latter the validity of a marriage where one of the parties was incapable of contracting according to his personal law. Each therefore involved the question of the proper control of the marriage relation to be exercised by the jurisdiction of only one of the parties. It is curious that the English court recognized the validity of a marriage celebrated in the local state, though only one of the parties had capacity according to that law, whereas in the United States, notwithstanding the constitutional "full faith and credit" provision, the state wherein one of the parties was domiciled was denied jurisdiction to dissolve the marriage. Though a surprise to the bar generally, and decided by a bare majority of the court, it is the supreme law of the land. The editor should not, we think, have omitted to give at least the very able dissenting opinion of Mr. Justice Holmes, in a compilation intended to develop the principles as well as the settled law of the topic. Mr. Justice Brown, who also wrote in that cause, characterized the majority decision as "a step backward in American jurisprudence."

The editor had well in mind the scientific purpose when he appended translations of the conventions and drafts adopted at The Hague in the

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official conferences upon private international law (1893, 1894, 1900 and 1904) participated in by nearly all the European countries and by Japan. It is doubtful whether any of these will be clear to the average student without supplementary instruction by a specialist familiar with Continental practice. Buzzati has treated them exhaustively in his recent work (reviewed in POLITICAL SCIENCE QUARTERLY for December, 1908). In their present connection they serve to show the results attained by the expert delegates of governments seeking to accomplish a logical as well as a workable system for the solution of international conflicts of law.

ARTHUR K. KUHN.

NEW YORK.

Die Lehre vom Pouvoir Constituant: ein Beitrag zum Staatsrecht der französischen Revolution. By EGON ZWEIG. Tübingen, J. C. B. Mohr, 1909.—xv, 482 pp.

Dr. Zweig's monograph is an important study in the development of the doctrine of popular sovereignty and at the same time a serious contribution to the constitutional history of the French Revolution down to the Eighteenth Brumaire, where in his opinion, the *Dogmengeschichte* of the constituent power finds its "natural close." It is the author's purpose, we are told in the preface, to show how a political doctrine was taken from its position in philosophical literature, where it had long been in process of formulation, and was forged anew in the storm and stress of real interests and needs, to which it corresponded in the scheme of historical dispensation. This plan, accordingly, calls for a chapter on origins which carries us back along the familiar road past Locke, Bodin, Thomas Aquinas, Marsilius and John of Salisbury to Greece and Rome. Aristotle it was who distinguished between fundamental and ordinary laws by setting over against Lycurgus, the founder of a political system, Draco who merely laid down rules within the existing order. After this chapter on political philosophy comes a consideration of the historical processes in which the theory of a constituent power finds a more or less definite expression: the two English Revolutions and the early constitutional developments in America from which the French *philosophes* learned many practical lessons and derived more precise political notions. The ten chapters dealing directly with the theme of the volume are excellently planned. One, of course, surveys the writings of Rousseau from the author's point of view, and results in the conclusion that Jean Jacques was nearer reality, as re-

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gards the question of constituent power, in his considerations on the Polish constitution than in his more abstract disquisitions. Another chapter is devoted to the two men who did most to transform the dogma of the constituent power into an effective instrument of political warfare: Condorcet, who saw clearly, and formulated precisely the leading political ideas of his time (page 115), and Siéyès, who tempered Rousseau's popular sovereignty with the check and balance scheme inherent in Montesquieu's separation of powers (pages 116–17). A third chapter traces the constitutional evolution of the old régime down to the calling of the Estates General, in order to show the constitutional ideas and instruments with which the philosophers had to deal. With this introductory equipment, Dr. Zweig attacks the confused and interminable debates and discussions that accompanied the work of the National Assembly and the Convention, in order to discover, by a critical examination of the public documents and the views of the leading participants in the Revolution, the place and form of the doctrine of the constituent power in the swift constitutional development of the ten years from 1789 to 1799. The chief sources for our author's purpose are naturally found in the discussions in the National Assembly and the Convention over their respective powers, over the Declaration of the Rights of Man, over the veto and over the amendatory process. By force of circumstances, the main portion of the volume is occupied with detail—reflecting the views of this or that publicist and discovering what degree of consistency can be found in the rapidly changing forces of those momentous ten years. These details have been sought and sifted with a painstaking and discriminating thoroughness, amply evidenced in the formidable array of foot-notes and citations; and surely all that anyone could wish to know about the theory and practice of the constituent power during the French Revolution is contained in this monument of research. The text adheres pretty generally to tangible fact, but occasionally there is a bit of attenuated speculation that will annoy the "hard-minded" student of politics who cares not a whit about the *Ding an sich in der politischen Erscheinungswelt* (page 3). Furthermore, Dr. Zweig, while incidentally admitting that no constitutional schemes can long hinder the sway of real forces in public life (page 324) certainly ascribes too much importance to "ideas" as effective forces making for readjustments in the domain of law enactment and law enforcement.

C. A. B.

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Modern Constitutions. By WALTER F. DODD. The University of Chicago Press, 1909.—Two volumes; xxiii, 351; xiv, 334 pp.

It is highly questionable whether any person not sufficiently familiar with the language of a country to read the constitution in the original tongue can know enough about the actual conditions under which its government is carried on to study its public law with any degree of profit; without some very real understanding of the history and the economic forces of a nation, an examination of the bare text of the constitution is more likely to be misleading than illuminating. Constitutional provisions are so largely matters of local circumstance—consider, for example, the suffrage in Prussia, the Austrian Empire, England and Virginia—that a mere comparison of them on paper can scarcely be said to contribute anything to the advancement of political science. Nevertheless, comparative constitutional law undoubtedly has its utility, especially in bringing out the the leading elements of our own system, and it gratifies such a legitimate interest that it has secured a permanent place in our curriculum of politics. Through the labors of Dr. Dodd the student and teacher of public law may now readily supplement the well-known manuals and treatises by texts (all in English) of the fundamental laws of twenty-two of the most important nations: Argentina, Australia, Austria-Hungary, Belgium, Brazil, Canada, Chile, Denmark, France, Germany, Italy, Japan, Mexico, the Netherlands, Norway, Portugal, Russia, Spain, Sweden, Switzerland and the United States; in short Dr. Dodd has done for English-speaking students what Dareste, in his *Constitutions modernes*, did for his fellow-countrymen some years ago. Each document is prefaced by a short historical introduction which, as the editor suggests, "may serve to refresh the memory of those who have already had adequate historical training," and is brought up to date by brief annotations on the amendments. Further help is given to the student by the discriminating bibliographies accompanying each document. The success with which this large undertaking has been carried out in detail could be determined, of course, only by a reviewer with an extraordinary linguistic and legal equipment, but we are informed that each text has been submitted for revision to a competent person, while care has been taken in every case to obtain accuracy and clearness. An examination of a few of the documents in connection with originals bears out the contention of the translator, although it must be admitted that faithfulness to the letter of the law has sometimes produced an unnecessary awkwardness and an occasional obscurity. Unfortunately the editor

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does not anywhere state the authoritative text on which he has founded his translation—a serious omission in a scholarly work of this character. It is true that he sometimes acknowledges assistance from certain older translations, but in most instances no clue is furnished to the document which he has used as the basis for his translation. Take for example the constitution of Russia. We are informed (volume ii, page 181, note 1) that the English text of the October Manifesto is a "free translation" of the French text published in the *Journal de St. Petersbourg*, but no hint is given as to the source from which the fundamental law itself is taken. A comparison of Dr. Dodd's version with the highly authentic German edition by Dr. Schlesinger, published in the *Jahrbuch des Öffentlichen Rechts* for 1908 shows that the former omits several very important chapters, passing them over by reference only, and furthermore makes some errors in detail, besides being so free as to be misleading in places. It would be interesting, incidentally, to know how near one could get to the realities of the government of Russia by memorizing this "constitution." The translation of the Austrian fundamental laws is also faulty in a few matters, and certainly Professor Ulbrich (*Jahrbuch des Öffentlichen Rechts*, volume ii, pages 297 *et seq.*) does not take Dr. Dodd's view of the Hungarian version of the law regulating the common affairs of Austria-Hungary (volume ii, page 114, note 1). This criticism, however, is intended only to illustrate some of the difficulties in the way of executing so large a scheme as Dr. Dodd has undertaken—not to detract from the high excellence and general utility of his work. It is to be hoped, in closing, that no teacher will attempt to include all or even a major part of these constitutions in a course of instruction in public law. The American student of politics who knows how difficult it is to find out what is going on at the capital of his state, will not try to keep twenty-two capitals within the range of his vision.

CHARLES A. BEARD.

Principles of Politics. By JEREMIAH W. JENKS. New York, The Columbia University Press, 1909.—xviii, 175 pp.

The Development of the State. By J. Q. DEALEY. New York, Silver, Burdett and Company, 1909.—314 pp.

The field of public affairs has long been the common where browse the philosopher and the moralizer, the publicist and the social reformer, the man of learning and the man of practical experience. These vary-

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ing attitudes find their amalgam in Professor Jenks's lectures on the Blumenthal Foundation at Columbia University which now appear in book form. The attempt has been, says the author, "to bring into closer touch than is usual the work of the scholar and the practical man of affairs."

The opening chapter discusses "The Nature of the State and of Government." The title is more philosophical than the treatment. The author tells us that "the men who compose the government give character to the state," and bids us "not forget that the state is not a higher thing than all of us or at any rate than the best of us."

Succeeding chapters consider the social and economic problems which require political action and the methods by which such action may best be made effective. After a consideration of such fundamental questions as the proper scope of a constitution, the function of legislation, of administration and of judicial decision, we have an examination of the more special problems of party allegiance, the efficacy of third parties, qualifications for suffrage, separation of local from general issues, the gerrymander and the various methods of selecting and apportioning representatives. The tone throughout is one of discussion rather than of advocacy—a presentation of the problem to be solved and an impartial exposition of the merits and demerits of each solution suggested. Of exact and detailed information there is little. But the fruits of scholarship and experience have been used as illustrative material in a general discussion of the various expedients available to those who desire to promote our civic welfare.

The work might well have been designed as a primer of political morality—an examination of the nature of humanity to discover what motives prompt men to action and a consideration of the ideals which ought to determine their conduct. We are told that a free country should be a country of law, that legislators should take to heart the interest of the people, that one should vote for the interest of the public rather than for one's own private interest,—and kindred truths, wholesome and inspiring.

To the student of political science the lectures contain little that is unfamiliar. For the popular audience for which they are intended they are valuable as the contribution of a man of wide experience and sound judgment in the matters with which he deals.

In Professor Dealey's book we have an attempt to treat from the standpoint of political science much of the material usually accredited to economics and sociology. The State develops, says the author, in accord with definite laws and principles largely determined by the con-

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ditions of economic and intellectual life. So political science is held to include the study not only of the state but of the conditions essential to its existence and development. Yet he modestly regards it as a branch of the "larger study known as social science or sociology."

Part One discusses "Social and Political Development" after the somewhat imaginative genetic method of many writers on early civilization. Part Two, entitled "The Sovereignty of the State," is concerned mainly with the activities of individuals properly subject to governmental control.

The remaining two-thirds of the work deals with government. Governments are classified, powers are separated, and each several power, is discussed. Of chief importance as a contribution to political thinking is the emphasis laid on the separation of the administrative function from the executive, and the treatment of the electorate as a fourth department of government. Since the entire people of the state never act politically, the function of the electorate is derivative and representative quite as much as is that of the legislature. It would be well to point out, however, that this function is not coördinate with the other three, but an organized power of government, controlling though not directing the others, intermediate between them and that unorganized power which we term the ultimate sovereign.

Professor Dealey, by an excellent analysis of material culled from writers in various fields, has given a broad survey and composite picture which fulfills the hope expressed in his preface that the "student and general reader may obtain an outline of political organization and activity, so coördinated that he will be able to understand more clearly the meaning of political institutions."

THOMAS REED POWELL.

UNIVERSITY OF ILLINOIS.

The Repeal of the Missouri Compromise: its Origin and Authorship. By P. ORMAN RAY. Cleveland, The Arthur H. Clark Company, 1909.—315 pp.

To one moderately well acquainted with the history of the United States during the "Middle Period" the proposition that anything at the same time new and important could be said on the subject treated in this volume is likely to occasion a lifting of the eyebrows and a compassionate smile. No topic has been more copiously exploited by both those who were personally concerned in the episode and those who have looked at it historically. Responsibility for the repeal of the

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Missouri Compromise has been claimed on various grounds by many famous public men, chief among them Senators Douglas, Seward and Dixon. The motives assigned have been of all degrees of diversity and of all shades of respectability. It would have seemed *a priori* impossible that any significant person or cause concerned in the disastrous legislation could have failed of due consideration. Yet it is an undeniable fact that Dr. Ray, in the volume before us, has exposed the influence of individuals and of facts to which no previous writer has given adequate attention.

The substance of the volume consists in a close and excellent analysis of state politics in Missouri prior to 1854. From this analysis it becomes clear that party and personal rivalries in that state played a decisive part in bringing the Nebraska matter to the front. This has been intimated in a general way in all the good histories; but it has been left for Dr. Ray to give the place and date and individual's name in each of the local incidents that contributed to the grand result. The climax of his story is the demonstration that Thomas H. Benton's energetic campaign for reëlection to the United States Senate practically forced Senator Atchison to push the Nebraska bill to the front in Congress. That Atchison's need and urging were what induced Douglas to commit himself to the repeal of the Missouri Compromise is proved by Dr. Ray, not indeed with absolute conclusiveness, but by an overpowering array of circumstantial evidence. In view of this demonstration no accurate history hereafter can ignore the claim of Atchison to an important share of the glory or odium that belongs to the origination of the Nebraska bill.

Besides this central thesis of Dr. Ray's volume, it throws much incidental light on the personages and the issues of politics in the early fifties. Particularly interesting is the bearing of the Pacific railway question on the matter of organizing Kansas and Nebraska. The personality and political methods of Benton give to the pages at various points the spiciness that rarely failed to attend the doughty old senator's activity.

As a whole Dr. Ray's volume is both useful and interesting. It is the development of a doctoral thesis written under the supervision of Professor Hull, of Cornell University. If all doctoral dissertations were of the same quality the laborious scorn of newspaper critics would soon cease from troubling. Both Professor Hull and Dr. Ray are to be heartily congratulated on this monograph.

W. A. D.

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National Ideals Historically Traced. By Albert Bushnell Hart. New York, Harper & Brothers, 1909.—xvi, 401 pp.

This volume forms part of the history of The American Nation, in 27 volumes, written by associated scholars under the editorship of Professor Hart. With it the elaborate enterprise is brought to a conclusion, for although there is a succeeding volume it is occupied by the index to the series.

The author tells us that his attitude is Darwinian and that he purposes "to show not alone what exists but what it has sprung out of, how it is conditioned by the national experience." That is to say, he holds the view that the history of a nation is essentially an account of the processes of adaptive change by which its activities have responded to the accidents of its career. No concept of historical method could be more attractive to the student of political science, but after a careful perusal, made easy and enjoyable by the strong narrative interest of the work, it seems to the present reviewer that the work is strikingly deficient in this very respect. Instead of an interpretation of our national development, we have a rapid survey of its phases with a recital of the fluctuations that have taken place in popular sentiment. It is written in a loose, journalistic style, abounding in oracular judgments, often in sharp contrast with the accompanying statements of fact.

In the chapter on "Self Government," after expatiating on the "success of the Americans in maintaining liberty," it is later on remarked that "no free people is more subject to the arbitrary will of the man in authority than the Americans." In the chapter on "External Relations" it is observed that "if there be an American ideal of the relations of this country with the outer world, it is that of peace founded on mutual understanding and mutual respect;" but in the same chapter it is declared that "Americans are little accustomed to consider the ideals of weaker neighbors," and that "Democratic simplicity backed up by the force of ninety million people is sometimes brutally frank and explicit, but it carries its points." Sometimes logical incompatibles are joined in the same sentence, as in this instance: "Even where disrespect for law is manifest, law in the abstract is cherished and obeyed" (page 356). Before reaching this remarkable conclusion Professor Hart observed that "in no part of the civilized world are there so many murders and so many unpunished crimes as in the great American cities" (page 338); and further, that "the Americans in general have lost confidence in the courts as a means of protection to life and property from open violence" (page 339). In discussing national ideals in the chapter on

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"Theories of Government" Professor Hart notes that there is a "tendency to unify power," and he remarks that "in some Southern cities, the idea of checks and balances has so far gone into oblivion that a commission of three or five men is made mayor, cabinet, aldermen, common council and treasurer, all in one" (page 115). But in a later chapter he declares: "One thing is clear, that Americans prefer a complicated government with various centers of power" (page 176). The term Democracy is apparently regarded as so nearly synonymous with American government as to be freely interchangeable. For instance, "Democracy must meet the current belief that its ideals do not exclude the most scandalous corruption" (page 348). Democracy does not appear to be having trouble on that score in other countries in which the rule of the people has been really established.

Pretence and reality are often thrown into such sharp contrast by Professor Hart's unflinching candor in matters of fact that one might almost suspect him of sardonic intention in his grandiloquent discourse upon abstract ideals continually violated in practice, but the discrepancy is probably due to traditions of style from which Professor Hart has not escaped although he has probably done more than any other living historian to discredit them. As a repository of facts and as a guide to the bibliography of its various themes, the work has great value. Indeed, it is probably the most complete work now extant, as a manual of information on American traits, but it is singularly lacking in the insight that traces effects to their causes.

HENRY JONES FORD.

PRINCETON, N. J.

Histoire de la charité. By LEON LALLEMAND. Volume III. *Le Moyen Age.* A. Picard et Fils, 1906.—375 pp.

So large a book upon what seems at this distance a small but interesting subject gives promise of much enlightenment, but the reader of the volume under review is likely to meet with some disappointment. Innumerable illustrative facts have been brought together with painstaking accuracy. The sources of information are carefully given with many quotations from ancient documents in Latin, archaic French and Italian. The facts are marshaled in a logical order. Yet there is lacking that mastery of the subject that would arrange facts in their causal relationships and that would give the reader an understanding of the interplay of the various social forces which produced and determined the charity work of the middle ages.

The period covered is from the tenth century to the sixteenth.

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While the field is nominally all of Western Europe the references to institutions and conditions outside of France and Italy are meager. Two introductory chapters give a graphic story of the afflictions which beset the people of this period: repeated invasions from all sides, private wars between feudal lords, brigandage, repeated visitations of the black plague and other pests which decimated the population and periodic famines of such intensity that people appeased their hunger by eating clay mixed with bran, that mice and dogs were considered delicacies, and that human flesh was offered for sale in the public markets.

The book is divided into three parts under the headings: "Institutional Charities" (*Les Établissements Hospitaliers*), "Leprosy and Leproseries," and "Charity toward the Poor and Unfortunate outside of Institutional Assistance." The first part fills half the book. The *Xenodocium* or free lodging-house for pilgrims and other strangers seems to have been the first institution to become generally established, but the typical institution of the period was the *Maison-Dieu*, an almshouse or asylum where the sick, the aged and the helpless found some degree of physical comfort and religious consolation. A tendency to specialize manifested itself early in the period. The special hospitals for the isolation and care of lepers were the first to be developed, and they became very numerous. A little later we find special asylums for the insane, for the blind, for foundlings, for paralytics, for fallen women, for the aged, for retired priests and for people who had seen better days. These institutions were usually under ecclesiastical control and management, but a tendency to assume some degree of control on the part of municipal governments was increasingly manifested (page 104). The support was varied, but usually came from voluntary gifts rather than public taxes. The monks and nuns in charge of these asylums were under most rigid regulations which are given in detail (pages 165–191). The last division tells of many generous gifts for the relief of the poor, of societies for the burial of the dead, of early efforts for the suppression of mendicity, and of the *Monts de Piété*, or charitable pawnshops, which were established in Italy as early as the year 1463.

Three points the author maintains with apparent success in opposition to other writers whom he quotes, *viz.*, that the council of Vienna (A. D. 1311) did not aim to transfer the charitable establishments from clerical to lay management (pages 104–112); that the prevalence of leprosy was not due to the crusades (page 232), and that the hospital nuns took baths.

Upon the whole the book is a strong tribute to the power of the

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mediæval church in causing devoted service to the poor to prevail in the midst of barbarism and lawlessness and in maintaining institutions where the sick and afflicted were given not only kindly and intelligent but even comparatively scientific treatment in the midst of prevailing ignorance and superstition.

The author (page 112) protests against a writer who has reviewed the long history of the *Hotel-Dieu* of Paris, and who selected for publication whatever could be found of evil. One may question whether M. Lallemand has not gone to the other extreme.

It is doubtless an oversight that the story of the Spanish princess instantly curing with a compassionate embrace a woman covered with sores is given as historic fact (page 318), yet the author seems remarkably in sympathy with the mediæval point of view, and closes the book with a poem glorifying charity as a means of personal salvation. If the system of free lodgings had any effect upon the development of vagabondage, or if such charitable foundations as that at Autun (page 325), where three thousand people were regularly assembled for the free distribution of bread, were accompanied by any unhappy results, such facts and their lessons are unnoticed.

DAVID I. GREEN.

HARTFORD, CONN.

Le chômage et la profession. BY MAX LAZARD. Paris, Felix Alcan, 1909.—379 pp.

If stock of present-day statistics were to be taken, one of the most striking features would probably be the number of new problems which have come within the range of this science. Some would perhaps express a doubt as to the alleged progress in pure theory. Admirers of the past generation of leading statisticians might be tempted to maintain that there was much more ardor and enthusiasm in the works of Quetelet and Will Farr than in the dry volumes which statisticians publish nowadays. But at all events there will be no doubt with regard to the fact, that the present generation of statisticians grapple with problems which were hardly dreamed of a few decades ago. No sooner have we obtained a tolerable knowledge of the chances of death at different stages of life and under different circumstances, than the question arises how a man will on an average get through life from cradle to grave, at what age he will reach the summit of working power, what will be his income at different ages, what will be his chances of becoming an invalid or of getting out of work *etc.*; and each new problem gives rise to numberless new questions of more or less importance and to the cry for fresh statistical data.

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The work here reviewed is an interesting and valuable contribution to the solution of one of these new problems: that of unemployment. It might be objected that it covers only a small part of the vast ground which is to be laid open, *viz.*, that of the census reports, whereas the statistics of the trade unions, which will perhaps prove the more fertile, are not dealt with. Several years ago the well known Christian Socialist, J. M. Ludlow, remarked that the books of the trade unions would by and by reveal facts of much greater importance than the observations with regard to life and death which are contained in the books of the friendly societies or which are heaped up on the shelves in Somerset House. The monthly communications in the *Labor Gazette* testify to the truth of this assertion. When we come to deal with insurance against unemployment, such data will prove of immeasurable value. The new Danish act on public support of societies insuring against unemployment, one of the most interesting of modern social experiments, would perhaps never have come into existence if the vigorous Danish trade unions had not been able to furnish the government with statistical observations on unemployment in the various trades. The books of the societies which have been founded in consequence of that act, will undoubtedly after a time answer several questions which M. Lazard occasionally mentions, such as the influence of age, the duration of unemployment, the chances of under-rate workingmen for getting work and so on.

But the field is so broad that an author cannot be blamed if he chooses only a small part of it as his peculiar plot. Numbers of statisticians will in fact have to be set to work before the problem can be satisfactorily solved. M. Lazard aims at bringing harmony out of the apparent chaos of the chapters on unemployment which some of the modern census reports contain. He deals mainly with the French censuses of 1901 and 1896, and with the German enumerations of June and December, 1895. In France no less than 6600 various designations of trades were enumerated in 1901, forming about 1400 groups, which were again arranged under 250 heads in 10 sections. Great care was taken to avoid mistakes, and even though complete accuracy is of course unattainable, still we are justified in relying on the numbers as a fairly correct picture of the unemployment in a modern society.

M. Lazard does not confine himself to the tables of these reports; he rearranges the observations after a careful analysis in order to facilitate a comparison with other data. The correlation between the four series of observations will appear on inspection of some diagrams and

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tables, the sole objection to which might be that they are rather unpractically arranged, so that they require too much space. It might also be objected that the law of error is not applied, some of the trades having very few members and consequently proportionally wide casual deviations from the average. But at all events M. Lazard is quite justified in concluding that there is a much closer correlation between the members than would appear at first sight. To prove this he forms for each census and for each trade a "coëfficient of unemployment," *viz.*, the rate of unemployment of the trade divided by the general rate of unemployment at the time of the census in question. It is surprising how little these coëfficients vary from one census to another, leaving out of consideration some peculiar trades where the observations are evidently incorrect or small in number, or where the season has a comparatively great influence.

It is not difficult to prove this correlation by a single diagram. Tabulating for instance the results of the French census of 1901, so that the coëfficients of unemployment are arranged according to size, beginning with the smallest one, these coëfficients can be used as ordinates in a diagram, whereas the numbers, according to size, are used as abscissas. The result will be a curve rising from zero to the highest value of the coëfficient of unemployment tabulated. If, further, the corresponding values of the other censuses are put down with the same abscissa for each trade as in the curve, it will be found that these series of points follow the curve very closely, as an unadjusted table will follow an adjusted one.

After all this, there is reason to think that, although the problem is much more complicated, the chaos of the observations on unemployment will be more easily dissipated than was the corresponding chaos fifty years ago with regard to the mortality in various professions. And if this hold good, the solution of the great problem of our day, insurance against unemployment, will draw nearer.

HAROLD WESTERGAARD.

COPENHAGEN.

Unemployment, a Problem of Industry. BY W. H. BEVERIDGE. London and New York, Longmans, Green and Company, 1909.—xvi, 317 pp.

If the Unemployed Workmen Act of 1905 had accomplished nothing more than the production of this book it would have been justified. The author, as member of the Central (Unemployed) Body for London, which was created by the act, has acquired a first-hand, detailed

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knowledge of all the existing agencies and methods of relief that could scarcely have been obtained without the aid of that body. From this vantage ground he proceeds to distinguish and characterize the factors in this most complicated of all social problems. For unemployment epitomizes, as it were, all the defects both of the individual and of society, and a hundred persons with partial knowledge can find a hundred self-satisfying explanations and remedies. What is needed is analysis and synthesis—a just recognition of all causes and remedies, with a constructive capacity to place them in their proper relations both as to the relative importance of causes and the order of adoption of remedies.

The theoretical or analytical part of the book leads us inevitably to the "normal reserve of labor" as the indispensable and persistent requirement of modern business, and the practical part leads us to the organization of the labor market through labor exchanges analogous to the exchanges of other staple markets. Other causes and remedies receive their proper allocation with reference to these, and the book is not a mere eclectic of theories and cures, but each factor stands out clearly in its relation to the whole. The "reserve of labor" becomes, not that dogma of the socialists provoking to revolution by its all-surrounding vagueness, but a measurable fringe of business to be provided for by business methods; it becomes not a mere unhappy accident of seasonal and cyclical fluctuations, but rather the "normal" and necessary accompaniment of competition. I shall not summarize the exhaustive and admirable process of reasoning and evidence by which the author establishes this proposition, nor the way in which he squares it with the many problems and remedies of technical education, boy labor, emigration, relief works, charity organization, poor law and so on. Suffice to say that it is the key to the book and a distinct contribution to statistical analysis.

The organization of the labor market through a national system of labor exchanges follows logically the demonstration of the normal reserve of labor. The first object is to "decasualize" labor by affording nearly regular employment to a part, and thereby necessarily eliminating the other part as a "sheer surplus." This surplus, fundamentally differing from a reserve (page 206), must be cared for, by gradual reabsorption into industry through methods that are briefly outlined, or it must be treated according to individual needs of youth, age or deficiency.

Supplementary to the labor exchange must be provision for seasonal and cyclical fluctuations. Here are proposed two main devices, the elasticity of working hours and unemployed insurance.

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Insurance against unemployment stands in the closest relation to organization of the labor market and forms the second line of attack on the problem of unemployment. The Labor Exchange is required to reduce to a minimum the intervals between successive jobs. . . Insurance is needed to provide for the maintenance of the reserves while standing idle and of the displaced men while waiting for re-absorption.

On the other hand, a fairly complete registration of all employment offering is needed to preserve any scheme of insurance from abuse. Other minor schemes are mentioned, especially the systematic distribution of public work when private work is slack, and greater elasticity of wages. Such subjects as reform of the poor law and measures for increasing the general efficiency of the working classes are either taken for granted or fall without the scope of the essay.

JOHN R. COMMONS.

UNIVERSITY OF WISCONSIN.

L'Education économique du peuple Allemand. By GEORGES BLONDEL. Paris, Larose et Tenin, 1909, xxiv.—156 pp.

Pourquoi et comment coloniser? By FRANÇOIS BERNARD. Paris, Arthur Rousseau, 1905.—230 pp.

Nothing is drier to many of us than the pedagogics of our own science; but Professor Blondel of the Collège de France succeeds admirably in interesting the reader in an important part of it. His purpose is to arouse his compatriots to the necessity of "economic" training, and incidentally he revives the campaign against the classics, which still dominate French education. Acknowledging all that may be claimed for their efficacy in lending to France her literary aureole, he represents the "failures" in the present classical courses as out of proportion to the "successes." But industrial training succeeds where the classical fails. A large part of the youth of the nation should give up the vain chase after literary triumphs and reconcile itself to the narrow horizon which is its inevitable lot. It will then become active, happy and productive.

The philosophical origin of political economy has made of it a university study. The consequent inclination in university circles is to place political economy in a position of control with the technical studies of the industrial schools. The new industrial movement in Germany, however, although outside the pale of the universities, makes political economy the keystone of the arch of technical education. But the word "technical" is too narrow. The primary and secondary

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economic or industrial schools of Germany impart those general attainments, such as book-keeping, typewriting, languages, history, geography, in all their variations, which are useful *par excellence* to the business man. In the industrial and commercial high schools or colleges, the studies are of cultural quality. Perhaps the most interesting thing brought out by Professor Blondel is the enormous spread of this sort of instruction in the last ten years. An appendix gives further data on other foreign countries.

It is no wonder that the professor of *économie rurale* at a southern agricultural school of France—Montpellier—should interest himself in his country's colonial policy, closely allied as it is to his *Fach* and to his locality. For the principal colony of France faces it from the north of Africa, a brother of our author commands a steamer plying between Marseilles and Algiers, and the family is Marseillaise! Algiers, then, is destined to be the seat of operations from which, a hundred years hence, a great colonial empire is to arise just across the narrow seas from the mother country. This sounds fine, and we may hope that it will be so. Professor Bernard maintains that the French are essentially a colonizing people. The ratio of the European population in Algiers to the native is far in excess of that of the English population to the native in India (600,000 and 70,000 respectively) and of that of the Dutch population to the native in Java. French colonization is for the purpose of complete assimilation; English, for trade. In the broadest sense of the word, colonization pays. Many initial expenses must be defrayed by government, but in the long run the colony opens a field for private enterprise which is now become imperative, since industrial activities at home are more and more absorbed and monopolized by the state. The revival of France under the Third Republic would not have been realized in the absence of the colonial policy, made possible by the Berlin treaty of 1878 and initiated at that time. The treasure spent on Tonquin and on Madagascar is not wasted. The problem of the nations today is one of survival of influence and of civilization. Scandinavia, Italy, and to a large extent Germany, are letting their individuality slip away with their emigrants ticketed to other dominions. A notable case is Tunis, which is settled by Italians and Maltese; but the French leaven is slowly but surely assimilating to the mother country that province, including its Arabs and Kabyles.

There is a charm in this book. It well exemplifies the Frenchman's literary supremacy. Professor Bernard has ostensibly written no propaganda, but, on the contrary, a systematic treatise on colonization,

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logically covering the proper topics. The general form and pleasing diction disarm criticism, open the way for broad illustration and reconcile us to a circle of interests essentially Gallic.

W. G. LANGWORTHY TAYLOR.

UNIVERSITY OF NEBRASKA.

English Society in the Eleventh Century: Essays in English Mediæval History. By PAUL VINOGRADOFF. Oxford, Clarendon Press, 1908.—xii, 599 pp.

The scope of this volume is not so comprehensive as the title would suggest. We have here nothing like a full conspectus of social and political institutions. The author does not profess to deal with the machinery of central government, nor has he formally included in his plan any account of family law or of arrangements for the maintenance of the public peace. What he has given us is a series of special essays, similar in general character to those contained in Maitland's *Domesday and Beyond.* Like Maitland, he is true to Seebohm's general principle that we must work backwards into Anglo-Saxon history, proceeding from the known to the unknown. Like Maitland, again, he is primarily interested in questions of land tenure, justice and taxation. But the difference between the two volumes goes deep, in spite of the superficial resemblance. Maitland would have been the first to admit that his knowledge of the text of Domesday was relatively slight; while not the least merit of the book before us consists in the patient correlation of scattered bits of evidence from this cardinal authority. Maitland was at his best in the adumbration of a new hypothesis; but Vinogradoff excels in the elucidation of terminology and the description of concrete phenomena. Maitland ranged over all the centuries of Anglo-Saxon history, whereas Vinogradoff is more concerned to analyze the conditions which prevailed on the eve of the Conquest and is rather tentative in his suggestions about origins. Finally, it is clear that "social history" means economic history to Vinogradoff, whereas to Maitland it meant the history of legal ideas.

When we rise from the perusal of *English Society* and ask ourselves what it contributes to the subject, we naturally think in the first place of certain specialized descriptions and discussions. Good examples are afforded by the section upon "Rural Organization." We find here: (1) a theory that pre-Conquest manors had been largely formed as the result of a set policy "tending to substitute estates of four or five hides held by thanes for a quantity of small freehold tenements"

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(page 310); (2) an account of three distinct types of early manors, differentiated by the relations in which their demesnes stand to the subject population and the outland (pages 313 *et seq.*); (3) an elaborate explanation of the term *berewick* (page 365); (4) an account of the evidence which proves the persistence of self-governing townships (page 395). In each of these passages there are new points to be considered, and the list is not by any means exhaustive.

It is not so easy to mention any generalizations of far-reaching import. In fact, if I may say so, the author's attitude towards the subject is more impressive than his positive conclusions. He is entirely free from some of the besetting sins which have been too strong for his forerunners. He takes no pleasure in mere refutation; and, when he has occasion to notice theories which are now discarded, he takes the utmost pains to collect the evidence which may be advanced on their behalf, and to allow for this evidence in his own conclusions. For example, while he accepts Mr. Rounds's view as to the nature of the Norman knight's fee, he states the case for the five-hide unit more powerfully than any of its advocates; and, again, while rejecting the idea that the manor is primarily a geld-unit, he contends that the manor was sometimes a geld-unit and often a device for facilitating local administration. Secondly, he is not content with merely negative conclusions. It is not enough for him that the area of the knight's fee varies widely from one shire to another and from one fief to another; he aims at discovering the why and wherefore of local variations. Admitting, again, that the geld was in the first instance summarily assessed in round figures upon large communities, he then proceeds to ask why the discrepancy between assessment and area is greater in Wessex than in the Danelaw, why Northamptonshire gets a remission of forty per cent, why in parts of Yorkshire the assessment is exactly double the estimated arable, and so forth. In the course of these investigations he throws out a certain number of theories which call for careful consideration. But the leading idea is that no single theory will account for facts of so complex a character. Thus, to take an instance to which I have already referred, the chapter on knight-service insists that any adequate account of subinfeudation must allow for the following phenomena: (1) the prevalence of the five-hide unit in Wessex; (2) the *feoda minuta* of the honor of Mortain; (3) the composite *feoda* of the Danelaw, in which the liability to find a knight is thrown upon a group of socmen; (4) the comparatively large area of northern fees; (5) the tendency in each large barony to establish a standard size for the fee. From the consideration of all these difficulties he concludes that the

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Conqueror's tenants in chief were reluctant or unable to make radical changes in the existing system of holdings; that thane-service on the five-hide basis had been well established in the South before 1066; that it proved difficult to bring the North under the feudal system; and that the lands of the North were in consequence less heavily burdened for knight-service than those of the South.

To turn from description to criticism, it must be admitted that the book is difficult to read; in fact, we are sometimes left with an uneasy feeling that we may not have grasped the form of the argument or the exact content of the conclusion. The author is to be congratulated on his remarkable command of the English language; and it seems probable that his obscurities are due less to difficulties in handling his medium of expression than to rapidity of composition. Take for example the passage on exemptions from geld (pages 190 *et seq.*). Vinogradoff notes that in the Norman period the inland of churches and of military tenants-in-chief is exempted; and he argues that this immunity is based upon a more ancient principle, "the division of the land into farm-rendering and geld-paying areas." But, since the institution of Danegeld was recent, the principle in question can not be particularly old. If I understand the argument aright, one should substitute for "geld-paying" some such expression as "subject to public burdens." The argument then is that the exemption of inlands proceeded from the same principle which led to the antithesis between privileged bookland and unprivileged folkland. But a grant of bookland gave immunity from most public burdens for all the land comprised in the grant, whether tenants' land or inland. It did not exempt any part of the land from the *trinoda necessitas*, except in some few cases; and it is extremely doubtful whether it carried exemption from geld. It is therefore not easy to represent the Norman principle of exemption as derived, in any but the loosest sense of the word, from Anglo-Saxon usage. At all events the passage needs recasting if it is to carry conviction.

It may seem captious to criticize the erudition of a book which shows an extraordinarily wide range of research. But in one chapter, that on franchises, we cannot help feeling that more definite results might be obtained from a systematic use of Anglo-Norman charters to religious houses. These are usually mere confirmations of old liberties, and they consequently throw considerable light on pre-Conquest history. One of the houses to which Vinogradoff frequently refers is Bury St. Edmunds. The cartularies of this house are rich in Anglo-Norman evidences which explain and supplement the informa-

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tion of Domesday Book. And the early charters of Westminster Abbey are valuable for the same purpose. It cannot be doubted that the author is acquainted with these materials, and it is surprising that he has omitted to use them.

Vinogradoff's references to bookland call for some remark. He recapitulates in this volume the thesis which he has elsewhere[1] developed at greater length. He insists that the essential characteristic of bookland, at least in later Anglo-Saxon times, is to be found in the owner's rights of alienation and devise. He admits that bookland commonly enjoys certain immunities; but he regards these immunities as accidental; he will not admit that they are the *differentia* of bookland. Now with regard to the land of religious houses it would be difficult to establish these propositions. It may be admitted that there are cases in which an Anglo-Saxon king books land to a bishop, with express license to alienate and even to devise;[2] but these are grants made to a person, not to a see. There is good evidence to show that, under normal circumstances, the occupant of an abbacy or bishopric was not permitted to do as he pleased with the bookland of his benefice. As early as the year 811 we find a royal grant to Winchcombe directly limiting the power of alienation:

Hoc quoque ego Kenulfus rex, et omnes qui in nostris siniodalibus conciliis testes atque conscii huius rei presentati fuissent, diiudicavimus atque unanimo consensu constituimus, ut . . . nullus fuisset homo aliqua audacitate fretus, quoquo modo torvave cogitatione, aliquid per vim exinde rapere, nec diminuere, *neque agros meae hereditatis foras transdonare vel accommodare, nisi ad tempus et ad conditionis statutum unius hominis.*[3]

A rather different and stricter limitation is imposed in a grant of 930, made by Athelstan to Crediton:

Predictus agellus in sua stabilitate semper fratribus ad mensam . . . firmus et inauferabilis perduret; nec habeant fratres licentiam illum foras dandi regi, episcopo, vel cuilibet homini, nisi alium maiorem atque meliorem, pro eius vicissitudinis commotatione, alia similiter cum cartula perpetualiter hereditaria recipiant.[4]

[1] Romanistische Einflüsse im Angelsachsischen Recht: Das Buchland (reprinted from the Melanges Fitting, 1909).

[2] Thorpe, Diplomatarium, pp. 65, 270.

[3] *Ibid.*, pp. 60, 61.

[4] Crawford Charters, no. 4, p. 7.

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Edgar expressly prohibits the alienation, by the bishop; of lands which have been booked to the see of Winchester:

Rura tam a regibus quam a diversis Catholicis ad usus fratrum Domino largiflue collata, huius saeculi militibus sive propinquis carnalibus, pro munere quolibet adulando tribuens, ad animae suae detrimentum nequaquam disperdat.[1]

Finally, we may quote the well-known letter from Bishop Oswald of Worcester to King Edgar, which shows that the writer recognized the necessity of obtaining the royal consent to his grants, even of *laens* for lives, when made out of the bookland of the see:

Hec itaque conventio cum eis facta est, ipso domino meo rege annuente et sua attestatione munificentie sue largitatem roborante et confirmante, omnibusque ipsius regiminis sapientibus et principibus attestantibus et consentientibus.[2]

The general principle that church-lands may not be alienated without the leave of the crown appears to be recognized, in one or two cases, by the Norman sovereigns. We may mention two cases in which an abbot of Ely and an abbot of Ramsey are restrained by royal writ from dispersing the patrimonies of their respective houses.[3]

We conclude then that bookland should not be defined as land which can be freely alienated. Such a definition, though applicable to bookland in the hands of individuals, is inadmissible so far as regards the bookland of churches. The freedom which characterizes all bookland, by whomsoever held, is exemption from certain public burdens, such as *feorm-fultum* and the duty of entertaining royal messengers or officials. To this conclusion Vinogradoff himself seems to lean in a later passage (page 341).

H. W. C. DAVIS.

BALLIOL COLLEGE, OXFORD.

Introductory Economics. BY ALVIN S. JOHNSON. New York, School of Liberal Arts and Sciences for Non-Residents, 1907.—v, 338 pp.

This is an introductory text for "students of mature mind who seek to gain an introduction to modern economic thought, but who are not

[1] Thorpe, Diplomatarium, p. 261.

[2] *Ibid.*, pp. 262, 263.

[3] Liber Eliensis, p. 259; Ramsey, Cartulary, vol. i, p. 234; number cl.

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in a position to avail themselves of the advantages of class-room instruction." Consequently the structure of the text differs radically from that found in the ordinary text-book designed for the class room; the table of contents consists of a series of chapter headings; there are no bibliographical references, no footnotes of any kind, no paragraph numbers; there is not even an index. We find simply "a series of rigorous exercises in economic reasoning" which, on account of the absence of subdivisions, marginal notes and the other usual aids, require the closest application of the reader.

Some may question the need of a text of this kind, but assuming the existence of such a need it will probably be conceded that Professor Johnson's book meets it well. The arrangement is good, the argument is developed with a scrupulous logic and consistency, the style while not always simple is admirably lucid, the illustrations taken from practical life to illuminate the more difficult points of theory are numerous and singularly happy. In short the book is a fine bit of literary workmanship executed for a distinct clientèle.

Fourteen of the twenty chapters of the book deal with economic theory; five concern themselves with practical problems, and the last deals with the economic relations of government.

The discussion of economic theory contains little that is absolutely new, but it must be granted that Professor Johnson has expounded some of the borrowed principles with a clearness and forcefulness that makes his text at times surpass the original expositions. In his discussion of value he follows the Austrian School on all vital points—as he himself indicates in the preface. His theory of distribution is the productivity theory long associated with the name of Professor John Bates Clark. Professor Johnson does not, however, make the rigid distinction between "static" and "dynamic" theory that characterizes the *Distribution of Wealth*, and in this connection he lays himself open to some criticism because, to the reviewer at least, he seems not to emphasize sufficiently the elements of "friction." The chapter on "Rent and Capitalization" follows in a general way the argument on the same topic found in the texts of Seligman and of Fetter, although in the discussion of land rent Professor Johnson coördinates land rent more particularly with rent in general.

The practical questions discussed are money and banking, international trade, foreign exchange and protection. Here again there is nothing essentially new although the discussion is admirably clear, straightforward and fair. In considering the tariff Professor Johnson refers to the vital problem of preserving the physical and moral stand-

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ards of the workers in the manufacturing industries—a problem that has come seriously to the front in England and Germany and one to which the Pittsburgh Survey has given an ominous emphasis here. The casual reader may wonder why Professor Johnson selected for discussion the particular practical problems dealt with in the text and why he omitted such an important problem as the labor problem to which only incidental reference is made. The reason is probably that only those questions were considered which were more especially adapted to "rigorous exercises in economic reasoning." Furthermore, Professor Johnson is essentially a theorist and problems like the labor problem afford but little opportunity to the theorist. But his viewpoint is obviously broadly social and he is sympathetic toward everything that makes for human betterment and uplift.

EUGENE E. AGGER.

COLUMBIA UNIVERSITY.

The Story of Gold. BY EDWARD S. MEADE. Illustrated. New York, D. Appleton and Company, 1908.—206 pp.

The World's Gold: Its Geology, Extraction and Political Economy. BY L. DELAUNAY. Translated from the French by O. C. Williams. With an introduction by Charles A. Conant. New York and London, G. P. Putnam's Sons, 1908.—242 pp.

In these two books we have the interesting subject of the gold supply treated from two different points of view, yet both books contain essentially the same facts and reach practically the same conclusions. Dr. Meade is most at home in the economics of the subject, but two-thirds of his book is given up to a description of the historical and technical features of gold production. Professor DeLaunay, a member of the faculty of the *École Supérieure des Mines*, devotes his longest chapter to the economics of gold, the other three treating of the geology of gold, the geographical distribution of gold in the past and present, and the extraction and dressing of gold. Professor DeLaunay is rather contemptuous toward economists, and he strives to set up a theory of his own with regard to the part which the increasing gold supply plays in trade and industry. Dr. Meade, on the other hand, is very respectful toward geologists, quoting them freely and trustfully. If the two books could be welded into one volume we should have a very good book on the production of gold and on its influence on the welfare of humanity, and it would be an interesting and readable book if the Frenchman's style

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could be given the vigor and charm which makes Dr. Meade's book deserve its title of "story."

Dr. Meade has evidently had in mind the needs and tastes of the general reader, yet his book contains in compact form much information which the student of the money question will be glad to have. He describes in lay language the forms in which gold is found in the earth and the various methods of its extraction, and gives a succinct sketch of the development of the gold industry from early times down to the present day, discussing in one chapter the relation of the gold supply to prosperity and in another the probable future of gold production. In his geology, Dr. Meade is in agreement with Professor DeLaunay, but in his treatment of the economics of gold he is as orthodox as the Frenchman is heretical. He tells the reader that an increasing gold supply means high prices and prosperity, and that a decreasing gold supply means falling prices and hard times. These statements when properly qualified are entirely true, but the general reader, not understanding the various influences which affect the value of gold and hence the general level of prices, is likely to get from Dr. Meade the idea that good times and high prices depend entirely upon the gold supply. If the author had in a few pages shown how credit, resting upon a small reserve of gold, may cause a rise of prices and stimulate industry and the employment of labor, and how a collapse of credit, even when the gold supply is abundant, may bring on a fall of prices and a period of industrial depression, his little book on its economic side would have been a more illuminating story than it is. It is quite possible that the author avoided discussion of the relation of credit to money because he believed the general reader would not understand it. He may be right in this opinion, and if he is, his *Story of Gold* contains all that the public needs to be told. In the closing chapter on the future of gold production the author briefly presents reasons for his belief that the gold output will at least maintain, if not exceed, its present high figure for a good many years to come. An appendix presents a convenient summary of the mining law of the United States prepared by Dr. John C. Duncan.

Professor DeLaunay's book is valuable for its detailed and presumably accurate description of the geological and technical features of the subject, but it would be greatly improved by the elimination of its puerile economics. It is a pity that a man trained in the science of geology, which certainly deals with complicated phenomena, should so complacently question the conclusions of men trained in the science of economics. If Dr. Meade had indulged in his own theories with regard to

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the origin of lodes and placers, his conclusions could not have been more crude or less worth while than Professor DeLaunay's dogmatic reflections upon the uses of gold as money. To economists the most interesting part of De Launay's book is probably those pages in which he discusses the future of gold production. He believes that the era of an abundant and increasing gold supply is to last for many years; and that we may not fear any scarcity of gold, despite the remarkable fact that in 1906 the world, according to the author, had too little, as was evidenced, forsooth, by the rise in the rate of interest.

JOSEPH FRENCH JOHNSON.

NEW YORK UNIVERSITY.

State and Local Taxation. PROCEEDINGS OF THE SECOND INTERNATIONAL CONFERENCE UNDER THE AUSPICES OF THE INTERNATIONAL TAX ASSOCIATION held at Toronto, Ontario, October 6–9, 1908. Columbus, O., 1909.—636 pp.

An examination of the volume of proceedings of the second annual meeting of the International Tax Association held at Toronto, in October, 1908, impresses the reader with the variety of subjects considered, the varying degrees of excellence in the papers and the irrelevancy of a too considerable part of the discussion. Compared with the previous year the program shows one third fewer papers, and what is more to the purpose, the papers are concentrated in the main upon some five topics. These are: the taxation of natural resources, such as timber, oil and minerals; the taxation of insurance companies; inheritance taxes; the tax systems of the Canadian provinces; and the assessment of property for taxation purposes.

Upon the first of these questions the speakers reached some common ground. It seems to be agreed that timber is a crop and should be taxed once, but this involves so many problems of local finance that this statement is supplemented by another to the effect that the land should be taxed annually. Some suggestions were made to tax timber on its annual capitalized value, a method which would undoubtedly prove cumbersome and unsatisfactory in practice. One member of the Association asserted that the cutting of timber is not hastened by heavy taxes. This is true in many instances but in some cases the arbitrary tax on timber has forced early cutting and realization upon the holding. Agreement upon the taxation of mineral resources was not so easily arrived at, but the difficulties of taxing natural resources in the ground were thoroughly presented. The *ad valorem* method of

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assessment brings out admirably the absurdities of a valuation of mineral properties for taxation purposes. It is true the Minnesota Tax Commission made a highly creditable valuation of mineral properties on the Mesabe and Vermillion iron ranges, but they were favored greatly by the development of the industry, by the willingness of the companies to give information, and by the geological structure of the ore body. At least two of these conditions could not be produced anywhere else. The opinion of the readers of papers on the taxing of mineral properties, though cautiously presented, was to the effect evidently, that a production tax supplemented by a nominal land tax on surface is the method of taxing mineral properties likely to meet with the least opposition and at the same time produce fairly satisfactory results.

No thorough-going program is quite complete without some discussion of the taxation of life-insurance companies. The Toronto meeting was no exception to the rule. Two excellent papers were presented by representatives of companies, but the effect of them, like much of the lobbying by representatives of insurance companies for the removal of the tax on premiums, was negative. The majority of those present were of the opinion that there are many problems of greater importance than the taxation of insurance companies since not even the essentials of an adequate system have yet been worked out. In a large measure the attitude toward the question of inheritance taxes was the same, though the protest against federal encroachment in this field as compared with the needs of local governments, which are constantly increasing, was well timed, as the states will be compelled to utilize this source of revenue as soon as the necessary organization can be created. Especially is this true since the separation of state and local revenues is practically made impossible for many years to come because of insufficient sources of state revenue.

The holding of the conference in Toronto brought the Canadian provincial systems of taxation into the limelight. Accordingly, papers were presented showing in brief the outlines of the systems developed in the different provinces. While in the states the people have adhered rather strongly to the general property tax the Canadians have profited by their relations with Europe, the newness of their organization and the absence of trammels upon the conduct of government business. In consequence, Toronto for example, has been able to experiment with a system of business assessments as a substitute for the personal property tax; the provinces have simplified the land tax, developed the license system and special franchises, and in fact, have

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gone a long distance from the personal property tax, practically substituting a business-income tax for it.

Upon the question of the taxation of public-service corporations the drift of opinion of the conference seemed to be away from the valuation of such properties toward either a net or gross earnings tax. In the paper upon the "Work of Tax Commissions" it was expected that the reader would show what had been done in these directions by the various tax commissions, but reference was made alone to the laws of New York and the work of the tax commission of that state, and the conference did not have directly before it the results of the work done in some of the states by the new tax comissions. The warning against arbitrary assessments and despotism in the administration of tax laws as practiced in the United States was well in point. Professor Seligman's prophesy of the breakdown of the whole assessment system if some rule of action coupled with the fullest publicity was not adopted needed to be emphasized at a conference of men whose main view was upon revenue. The same line of thought was followed in its practical applications to the making of assessments by Professor Boyle and Mr. Purdy.

As the lessons of previous conferences are learned the tendency shown in the two earlier ones towards a limitation of subjects and a more detailed discussion of them will be more and more in evidence. The International Tax Association has given us two excellent volumes well edited, well arranged and attractively printed. The attendance and membership increases each year. At the Toronto conference railroad and corporation tax officers were present for the first time and they took part in the discussion with a resultant better understanding of the difficulties of the problem involved from the administrative and taxpayer's side.

FRANK L. MCVEY.

UNIVERSITY OF NORTH DAKOTA.

Effects of War on Property. BY ALMA LATIFI. London, The Macmillan Company, 1909.—viii, 155 pp.

Besides two essays on the *pros* and *contras* of the immunity of private property of enemies at sea as seen from the point of view of British interests, the volume contains four essays on the law governing the following subjects: "Property of Enemies and Neutrals on Land", "Effects of Conquest on Property", "Property of Enemies and Neutrals at Sea" and "Exceptions to the Rule of Capture of Property at Sea."

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Of the essays on the immunity of enemy property at sea, one is written by Professor Westlake, who undertakes to supplement the reasons advanced by Mr. Latifi against the proposal. Mr. Westlake urges that in passing judgment upon the arguments made in support of "this topsy-turvey policy" there is one fundamental principle underlying all warlike preparations by land or sea which must not be overlooked, *viz.*, "that what is struck at primarily is not the enemy's property but the enemy's trade," and that in so far as an enemy on land can "prevent trade which might create resources" for his opponent, "he is not deterred from doing so by the knowledge that his measures cause damage to individuals." Mr. Latifi examines the various aspects of the proposal very exhaustively from the point of British policy, and concludes that to accept "the change would mark the sunset of England's greatness, and her fall from her high place amongst the nations of the earth."

In discussing the doctrine under which the rights and duties of the conqueror, holding temporary military occupation, should be considered, Mr. Latifi disagrees with Hall that the existing rules can best be looked at from "the broad foundation of simple military necessity." He thinks the "many active duties of the invader, such as the re-establishment of public order and safety, the protection of the rights of of individuals, etc., . . . imply a position of quasi-sovereignty." In doubting the sufficiency of "military necessity" as a guiding principle, the author apparently overlooks the logical restrictions which he thereby imposes upon himself as a Britisher who, seeking to discredit the propaganda of immunity of private property of enemies at sea, denounces the propriety of applying the rules for the protection of non-combatant property on land to the protection of non-combatant property at sea.

As regards debts coming due to the enemy of a conqueror, having temporary military occupation, in respect to the *res* within the occupied territory, Mr. Latifi disagrees with Westlake that the occupant ought not to collect, and considers that the principle by which a belligerent has a right to restrict the enrichment of his enemy affords a sound ground for the occupant "to prevent the inhabitants of territory occupied by him from adding to the resources of the enemy by making any payments to him." This seems correct. Whether Article 49 of The Hague rules, which permits in case of military necessity the levy of contributions in addition to the usual taxes, has the effect of denying the right of a wealthy invader to exact contributions while permitting a poor occupying power to levy them is answered by the author in the affirmative, on the ground that to deny the right of a poor nation "to make

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war live on war" would be to "condemn countries like Montenegro to certain failure in a war against one of their neighbors."

As regards the levy of contributions by a naval force upon undefended localities, he sees no objection to it, if conducted within the general limitation of military necessity; he thereby escapes the charge of insularity made against Hall and other British writers who contend for the contrary rule. Mr. Latifi, at another point, shows a gratifyingly impartial mind in respect to British action when he characterizes the the seizure in 1807 by Denmark of the debts due British subjects "as a case, not of confiscation, but of retorsion, justified by the gravest provocation to an unoffending nation." He denies that either reason or recent practice justify the conclusion that an enemy has the right to seize as an ordinary measure of war the property within his territory belonging to the subjects of his opponent. Indeed, in no state to-day do such proprietary rights exist contingent upon the mere fact of war. As an act of retorsion for injury done, "war gives the right to confiscate, but does not of itself confiscate the property of an enemy."

Speaking of the liability of an annexing state to the inhabitants of the annexed territory for the requisitions and other forced obligations incurred by the ceding state in the prosecution of its war defence, the author dissents from the view of Westlake, and takes the seemingly sound ground that "the question of the validity of a debt incurred for carrying on the war ought to be referred, not to the consent or otherwise of the lender, but to the general principle whether the conqueror himself would have incurred this debt." The author omits altogether to discuss the points raised in the controversy between the United States and Spain as regards the assumption of the Cuban debts.

His failure to make use of the large body of precedents collected by Mr. Moore in his *International Arbitrations* and in his *International Law Digest*, and the omission, apparently, to examine at first hand the cases growing out of the Spanish-American and Russo-Japanese wars blemish an otherwise valuable series of studies on the effects of war on property. The lack of a table of the cases discussed and cited makes the book defective also as a law manual.

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BOOK NOTES

American Problems in International Law (New York, Baker, Voorhis and Company, 1909; 102 pp.) by Alejandro Alvarez is a reprint of a paper which appeared in the proceedings of the American Society of International Law. The author, who is the solicitor of the state department of Chile, as a member of the Pan-American Scientific Congress, introduced a resolution which commended to the faculties of jurisprudence in the various American states the study of "American International Law." By substituting for his proposition the phrase "American problems in International Law," the Scientific Congress pointed out the error which permeates the present thesis of Senor Alvarez. He contends that "the contribution of Latin America to the development of International Law has been of vast proportions;" that there are "some precepts of International Law universally recognized by the states of Europe which, however, are not applicable to the American continents;" that there are "problems distinctively American" which have given and are giving "rise to distinctive American principles of International Law;" and that "in spite of the obvious existence of an 'American' International Law . . . it has not been studied nor even clearly stated by the publicists either of Europe or America." He says "American publicists, in treating any matter whatever of an international character, have simply followed the doctrines and diplomatic precedents of Europe," and he himself undertakes "to draw an outline classifying systematically . . . the principal matters included in our subject of 'American' International Law." It would seem that most of the topics mentioned in this outline either suggest political as opposed to legal matters or else merely suggest conditions to the solution of which the well settled principles of international law might and would be readily applied. The author takes the characteristic attitude of a Latin American on such questions as the equality of states, their responsibility to aliens for gross denial of justice, the ignoring of the failure of some states to carry out in practice the high standards of international conduct to which they have bound themselves in their solemnized treaties, and he considers that the hasty introduction of these high standards of international conduct into treaty stipulations is the mark by which progress is measured in international law. The work is well written, and certainly makes as much

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of the impossible thesis as could well be made. It bears evidence of considerable research and is well worth reading.

Marcial H. Martinez de Ferrari's *Los Resultados de la segunda conferencia de la Haya, año de 1907* (Santiago de Chile, Imprenta La Ilustración, 1909; 315 pp.) is in great part devoted to the discussion of two questions: What is to be the rôle of the Latin-American Republics, especially Chile, in future conferences, and what can these republics reasonably expect from participating in a European congress? In answering these questions the author dwells at length upon the theory of state equality and the failure of the more powerful states to support it in actual application. He concludes that the states of reduced territory and small population must play the rôle of spectators rather than that of participants in European conferences. The author believes that there is much hypocrisy in the attitude of states toward international arbitration, and emphasizes the futility of this method of settling international differences so long as the high contracting parties to arbitration conventions lack sincerity. The volume contains the various Hague conventions.

Mr. E. C. Stowell's *Le Consul* (Paris, A. Pedone, 1901; 353 pp.) is a study of the functions, immunities and organization of the consular service, largely from the point of view of the experience and practice of the United States. The author considers that the usual classification of functions is illogical from the point of view of theory, and suggests an arrangement based on the nationality of the person and on the subject matter or end involved. He believes that the field of consular activity should be widened, and that the power of the consul to protect his compatriots should be extended, particularly in foreign colonies. He believes that by increasing the powers of the consul material aid might be had in solving the problems of congested Jewish, Italian and Chinese settlements. Contrary to the present tendencies of development he advocates "an extension of the personal character of the law." The author would increase the immunities of the consul beyond that of being an agent of trade without representative character. The ceremonial rank of the consul should be advanced and there should be more frequent transfers from the consular to the diplomatic service. Discussing the organization of the service, the author reviews the various methods of recruitment, control and advancement, and favors the competitive system supplemented by a probationary period of appointment. The volume contains several appendices, the most important of which is a bibliography of the material relating to the consular service.

In *La Escuela histórica del derecho* (Madrid, Librería General de

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Victoriano Suáres, 1908; 315 pp.), Dr. Atard, of Madrid, has translated a series of studies by leading members of the historical school of Jurisprudence. The volume contains two articles by Savigny, one on "The Purposes of the Journal of Historical Jurisprudence," and the other a "Critical Study of Goenner's book on Legislation and Jurisprudence." It contains also a critical study of the historical school by Eichorn, and a lengthy article on the same subject by Gierke. The volume closes with Stammler's excellent article on "The Method of the Historical School of Jurisprudence." As yet this school has received but little attention in the Spanish universities and Dr. Atard has, therefore, done a real service in making this volume accessible to students of the subject.

In a volume of 240 pages, Professor Posada, of the University of Oviedo, has published a translation of Jellinek's book, *La Declaración de los derechos del hombre y del ciudadano* (Madrid, Librería General de Victoriano Suárez, 1908; 240 pp.). In the "Introduction" Professor Posada includes a critical study of Professor Jellinek's book, in which he compares the point of view of the German and the French schools of political science. He devotes special attention to the controversy that arose between Jellinek and Boutmy, the former director of the School of Political Science in Paris.

A good translation of any technical work is a rarity, because success in such an undertaking means knowledge not only of the ordinary idioms of two languages but of a double set of technical terms. Acceptable translations of law books are especially rare. It is therefore remarkable that an admirable translation of *The German Civil Code* (London, Stevens and Sons, 1907; xxvi, 631 pp.) should have been made by a writer who is neither German nor English nor American, but Chinese, Dr. Chung Hui Wang. Exception may be taken to some of his renderings: *e. g.* in sections 117, 122 and elsewhere "required to be made" suggests a meaning that is not in the original: but on the whole the version is both precise and felicitous. There is a brief but useful historical introduction.

It is a hopeful sign, in the present state of our legislative methods, that the Federal Government has had prepared under the direction of Dr. George Winfield Scott and Middleton G. Beaman an analytical index to the federal statutes, *Index Analysis of the Federal Statutes together with a Table of Repeals and Amendments* (Washington, Government Printing Office, 1908; vol. i, v, 1373 pp.). The first volume embraces the general and permanent law contained in the Revised Statutes of 1873 and the Statutes at Large from that date to 1907, and

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covers every subject of a general and permanent character that might be of practical use in the work of legislation. The difficulties of this task can be fairly realized by anyone who has had occasion to look up a single subject in federal law through a number of years, and, although use alone can test the degree of success attained by the compilers, a careful examination of the arrangement and method of treating particular topics shows that they have worked with a practical understanding and a painstaking thoroughness too often wanting in government publications. It is conveniently adapted to the needs of the legislator, lawyer and student, for even the popular names of statutes, Dingley Act, Newlands Resolutions *etc.*, are given. It is in short a thoroughly workable index. The second volume covers statutes of a temporary, local and personal character. The volumes may be obtained from the Superintendent of Documents, Government Printing Office, Washington, at the nominal price of $2.50 each.

Professor Paul S. Reinsch has brought together under the title of *Readings on American Federal Government* (Boston, Ginn and Company, 1909; xii, 850 pp.) a remarkably vital collection of materials illustrating the organization and actual operation of the departments of the federal government. Most of the selections are from the *Congressional Record* and official papers, and the articles which are taken from newspapers and magazines are generally from the pen of men who have had practical experience in political affairs. In making his selections, the editor has kept constantly in view the real conduct of government today, and has avoided purely historical materials on one hand and controversial questions on the other. The following topics are chosen for illustration: the President, powers of the executive, the executive and Congress, the treaty-making power, the Senate, the Senate and House conference committees, the organization and rules of the House of Representatives, financial legislation, the departments, legislative and administrative problems, army and navy, American foreign service, civil service, the courts, centralization and changes in the constitution and the national convention. The selections are so admirably chosen that they certainly will have, as the editor suggests, "the exhilarating effect on the mind that brisk physical exercise has on the body." It would be difficult to imagine a better book on which to base a splendid university course in federal government.

Mr. Ellis T. Powell's *Essentials of Self-Government* (New York, Longmans, Green and Company, 1909; 309 pp.), is a detailed survey and criticism of legislative apportionment and electoral mechanism and operations in England and Wales; and it ought to prove one of the

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most interesting books on English government since Ostrogorski's monumental work, because it goes fully into election practices which most publicists are wont to represent in a favorable light by way of contrast with American conditions. He severely criticises the system of apportionment—with Romford (in Essex), containing 45,579 voters, at one end of the scale and Durham, containing 2,580 electors, at the other; he contends that ability to make contributions to local associations and to pay heavy election expenses is the preponderating element in the selection of candidates in the great majority of cases; he makes a plea for legislation that will prevent the impecunious voter from intimidating candidates by demands for "jobs;" he suggests that mendacity in election campaigns be penalized; and by way of conclusion, he advocates a system of recall, claiming that members of parliament under the lash of the government "whip" too often misrepresent their constituents. The volume is a welcome contribution to that newer literature on government, which is primarily concerned with the actual conduct of public functionaries in their relation to the electorate.

Time Limit and Local Option, a re-statement of the licensing controversy, by Charles Roberts, M. P. (London, P. S. King and Son, 1908; vi, 204 pp.), discusses in a fair spirit from the point of view of the advocate of local option as a means of securing prohibition of the liquor traffic many of the recent political issues in the English Parliament during the debate on the Licensing Act of 1904 and the Licensing Bill of 1908. The author thinks that a serious mistake has been made in recognizing a vested interest in a liquor license and providing for compensation when the renewal of a license is refused for reasons other than misconduct, and he believes that a time limit should now be fixed and all licenses after its expiration be issued for specified terms and be made non-renewable except at the pleasure of the state. The reports of the Licensing Commission and the available statistics on the liquor trade are discussed fairly and presented with many interesting graphical devices. This little volume, together with Mr. Edwin A. Pratt's *The Licensed Trade*, an independent survey (London, 1907), which sets forth with much sympathy the view of the license holders, suffice to give an American reader a fair understanding of an important issue in English politics which is not yet settled and for light upon which the English people are looking to our recent wave of prohibitory legislation.

The second volume of the new French annual, *La Vie politique dans les deux mondes*, under the editorship of M. Achille Viallate, has now

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come from the press (Paris, Felix Alcan, 1909; 628 pp.). This number covers the parliamentary year, October 1, 1907–September 30, 1908, and is prepared according to the plan and spirit of the initial issue (reviewed in THE POLITICAL SCIENCE QUARTERLY, March, 1909, p. 165). The work is indispensable to the student of contemporary history and politics, easily taking first rank among all the publications of a similar character. The American annual for 1908, *The New International Year Book*, edited by Frank Moore Colby and Allen Leon Churchill (New York, Dodd, Mead and Company, 1909; 776 pp.), differs fundamentally from the French publication in bringing under review the world's progress in every important field—art, literature, science, industry, education and economics, as well as politics—and is designed for the general reader rather than for the student or publicist. The volume contains, however, a survey of the history of each country for the year and special articles on matters of political interest like the presidential campaign, international arbitration, direct primaries and the Balkan question. An especially valuable feature is the account of the leading political issues in all of the states of the Union. For the student of political science the volume shows a decided improvement over the preceding number, and it is to be hoped that the editors will be able to increase the space given to this department of the work.

That valuable series, the *Bibliothèque d'histoire contemporaine*, has had another book added to it, *Le Monde actuel* (Paris, Felix Alcan, 1909; 372 pp.), by Ed. Driault, well known as a contributor of various other works to the series. It is a clearly written survey of the world-situation as the twentieth century inherited it from the nineteenth. Yet, as there is nothing in it which cannot be found in good encyclopædias, and as the author furnishes no indications of the sources of his information, the student will find it of little value. Where other books are inaccessible it will be useful, mainly because of its conciseness and scope. It seems almost unforgivable, however, that a book dealing with the elusive phenomena of our present civilization should not contain a single bibliographical indication. Even statistics should not be quoted without references; there are various ways of quoting them wrongly. M. Driault's insight into social problems is not convincing.

In the *Builders of United Italy*, by R. S. Holland (New York, Henry Holt and Company, 1908; 350 pp.), we have a series of graphic and interesting biographical sketches written in good style and taking up the problem of the unification of Italy from its most dramatic side. The leaders chosen are Alfieri, Manzoni, Gioberti, Manin, Mazzini,

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Cavour, Garibaldi and Victor Emmanuel. No book written about such characters can lack a large human appeal, and Mr. Holland has visualized the drama for us. While not exactly history, his series of biographies may be recommended for that valuable side-reading which keeps alive the imagination and helps it to hold the past in fee.

Two books of considerable interest have appeared recently dealing with modern Hungary: Gené Gonnard's *La Hongrie au XX^e siecle, étude économique et sociale* (Paris, Armand Colin, 1908; xii, 398 pp.), and Count Joseph de Mailath's *La Hongrie rurale, sociale et politique* (Paris, Felix Alcan, 1909; viii, 356 pp.). The former is a careful first-hand study by a professor at Lyons who has become an enthusiastic admirer of the Magyars; the latter is a collection of essays and speeches by a Magyar noble and statesman of European reputation. Both show their tendencies, but the exuberant appreciation of things Magyar which even transforms the hovels of farm laborers into things of beauty does not prevent M. Gonnard's book from presenting a most graphic picture of life in Hungary; and when the reader once gets his bearings, Count Mailath's speeches and essays give a close insight into the ideals of a great landowner face to face with modern forces. In the poverty of books about Hungary these two books will be welcomed by all students of Danubian problems. They would be valuable in any case, as serious and thoughtful studies of a great nation.

Professor Folwell's little volume, *Minnesota, The North Star State* (Boston and New York, Houghton, Mifflin Company, American Commonwealth Series, 1908; 382 pp.), aims to sketch the history of Minnesota from the earliest French explorations to the present day. It is the best written book on the subject, and is the most trustworthy. Dr. Folwell is thoroughly familiar with the recent history of the state. He was the first president of the state university, held for many years the chair of economics and political science, and was at the same time the librarian of the university. His statements are based on the careful study of the best original sources, many of which have never been used before. The arrangement of the subject matter is chronological throughout. On this account important topics like the railroad, public lands, the iron mines and lumber interests are not treated connectedly in the separate chapters as one might expect. The limitation of space doubtless necessitated the skimming-over of significant recent developments in the State. The work is intended to be a readable book, not an exhaustive history of the State. The story is well told. Through it all runs a stern and healthy morality, characteristic of the man. His comments on public men and measures are

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open and fearless. The book, within the limitations set by the series, is satisfactory and entirely commendable.

Professor Lawrence Evans has planned an admirable series containing selections from the writings of American statesmen on important historical and political subjects, and the first volume *Writings of George Washington* (New York, G. P. Putnam's Sons, 1908; lxvii, 567 pp.), has now appeared. In addition to the great historic documents, such as the Circular Letter to the Governors, the two Inaugural Addresses, and the Farewell Address, the collection embraces valuable letters and papers relating to Washington's part in the leading events of the Revolutionary War, the formation and adoption of the Constitution, the launching of the new government and its problems, *i. e.*, the treaty-making power, neutrality, the Whiskey Insurrection, education and slavery. Such a handy series has long been needed and will be well received by teachers of history and politics as well as by citizens who like to draw upon first-hand sources of information.

The first half of the nineteenth century is one of the great periods of English history, and it is just and fitting that the biography of one who played an important if not always a conspicuous part in British public life during this period be widely read. It is therefore gratifying to note that Graham Wallas's *Life of Francis Place* (London, Longmans, Green and Company, 1908; x, 415 pp.), has warranted a re-issue.

The Colonial Press has issued a new, handsomely bound edition of John Stuart Mill's *Principles of Political Economy* (2 volumes, xvii, 460; x, 480 pp.) with a special introduction by President Hadley. The text is as last revised by the author. Bound here and there in the two volumes are facsimiles of beautiful examples of early printing and engraving.

In the *Outline of Economics*, (Boston, Ginn and Company, 1908), a book of seventy-five pages, Mr. John Daniels gives a "conspectus and survey of the entire field of Economics." He deals not only with economic theory but also with all of the practical problems. Where he conceives that economists agree he gives the accepted conclusion, but where there is disagreement he attempts to present both sides of the case. Of course in an outline of this kind there can be no exposition or detailed argument. One finds simply two parts, one dealing with value and the other with production, distribution and consumption, and within these a series of sections under which the subject matter is arranged in brief, dogmatic paragraphs. As a summary of current economic principles the *Outline* is acceptable but it has all the limitations of a summary.

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Messrs. Scott Nearing and Frank D. Watson of the Wharton School have contributed a text-book on Economics that is unique. Its title is *Economics* (New York, the Macmillan Company, 1908; xii, 499 pp.) but it has only thirty-nine pages of economics in the accepted sense. This is Book VIII dealing with distribution. The rest of the book deals with practical questions and problems. To those who think that economics can be taught only by giving chapters of facts about pretty much everything in general the book is commended.

Mr. Francis E. Steele, fellow of the Institute of Bankers, and sometime lecturer on banking to the London chamber of commerce, has collected a number of addresses delivered and articles issued during the past few years, in a volume entitled *Present Day Banking* (London, Butterworth & Company, 1909; 224 pp.). Most of the chapters are slight, but deal in an interesting way with some of the narrow problems of English banking. Particularly well done is the chapter on the middle-man in finance, calling attention to the economic function of the jobber, as well as of the stock-broker and the bill-broker. A luminous essay is also that on the bank rate, and its effect on the money market and the stock exchange. To students of present-day banking methods, in England, the little work will be welcome.

Mr. Victor Morawetz, who has been taking a prominent part in the recent controversies on Finance, has elaborated his ideas in a little volume entitled *The Banking and Currency Problem in the United States* (New York, North American Review Publishing Company, 1909; 119 pp.). While Mr. Morawetz is an opponent of a central bank, he is a strenuous advocate of some form of central regulation. His particular scheme is to authorize the national banks to issue notes upon their joint credit, and to control the uncovered amount of the notes by the joint action of the secretary of the treasury and of a managing board, to be elected by the banks. It is an interesting attempt to combine the idea of centralization with that of independent banks. But like all compromises, it will be objected to as a half-way measure.

Mr. Charles A. Conant has brought out a fourth edition of his well-known work *A History of Modern Banks of Issue* (New York, G. P. Putnam & Sons, 1909; xi, 751 pp.). The new edition is larger than the third, and is naturally more interesting because of the developments in the field of banking during the past decade.

To most people the ways and manners of Wall Street are inscrutable mysteries. In a booklet called *The Real Wall Street* (New York, The Corporations Organization, 1908; 69 pp.), Mr. William Harman

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Black attempts to dispel at least some of these mysteries. He gives a fairly complete description of the terms of "the street" and of the methods employed by brokers in buying and selling stocks, their charges *etc.* It is a little descriptive manual telling what it all means but it is not in the least critical.

The second edition of Professor Emory R. Johnson's *American Railway Transportation* (New York, D. Appleton and Company, 1908; 434 pp.), has been brought down to date. Perhaps the most valuable additions to this standard work are to be found in the discussions of the Hepburn Act and a summary of state legislation from 1902 to 1908.

Mr. John Lathrop Matthews has succeeded in making not only a readable but also a distinctly valuable work of his *Remaking the Mississippi* (Boston and New York, Houghton Mifflin Company, 1909; 265 pp.). It is an attempt to give an account of the facts that govern the most important water system of this continent. After an interesting chapter on the hydrology of the system, Mr. Matthews explains clearly the methods of controlling the so-called major bed of the Mississippi by levees, and the regularization of the minor bed. In a chapter on the river mouth he shows how we are ultimately reverting to the original scheme of the great Eads. Separate chapters are devoted to the upper Mississippi, the Missouri, the Ohio and the tributaries, and an illuminating discussion is given of the Lake-to-the-Gulf scheme. While the book tells the story primarily of the engineering development, and of the proper conservation of the waters, Mr. Matthews clearly perceives the immense economic importance of the project. The work has been so well done that we look forward with eagerness to the promised supplemental volume on the new plans for the future development of the various Mississippi channels.

Dr. Louis André's *Histoire économique depuis l'antiquité jusqu'à nos jours* (Paris, Alcan, 1908; 200 pp.) very properly reaches modern times in twenty pages. Its survey from the fifteenth century is clearly and well arranged for its purpose—that of a school text-book in France. Such helps to the study of economic history in our schools are to be welcomed. Unfortunately this one is too uniformly French in its point of view to be used outside of France. The country of the Industrial Revolution should receive fuller treatment. References and a short bibliography should be added to make the book of value for any but children.

Thoroughly misleading is the work entitled *History of Economics, or Economics as a Factor in the Making of History*, by J. A. Dewe, (New York, Benziger Brothers, 1908; 334 pp.). When we come to

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look at the book we find that it is not a history of economic thought at all, but that it attempts to deal with the influence, not, indeed, as the title says, of economics, but in reality, of economic conditions, as a factor in history. Unfortunately, even as to this the book is almost entirely worthless. In Part I, which deals with the Greek and Roman period, the reverend author seems to be entirely unacquainted with the recent literature on the subject, and almost invariably misses the main point. And in the discussion of the mediæval and modern periods, we find almost nothing but commonplaces, and no evidence of any familiarity with modern discussions. The book bears the *imprimatur* of Archbishop Farley of New York, and is published by the printers to the Holy Apostolic See. It is not a credit to either.

One of the most valuable volumes in Methuen's series of *The Antiquary's Books* is the work of George Unwin on *The Gilds and Companies* (London, 1909; 397 pp.). Mr. Unwin's admirable work on industrial organization in the sixteenth and seventeenth centuries, which appeared a few years ago, showed that he was thoroughly well qualified to undertake this more popular, and at the same time more comprehensive, investigation. What he has attempted to do is to give an outline of the continuous development of the gilds of London, from the earliest times to the present and, as he tells us himself, to lay the main stress on their significance for the constitutional history of the city, and for the social and economic development of the nation. He has utilized all the more recently published documents, like Dr. Sharpe's *Calendars of Wills*, and the unpublished records of the more important livery companies. The result is a thoroughly scholarly production, which will prove at the same time interesting to the general reader. The book is full of illuminating *aperçus*, as, for instance, when he tells us (page 224) that the yeoman of the end of the fourteenth century was a journeymen on strike, while the yeoman at the end of the sixteenth century was often a wealthy trader on his way to be Lord Mayor. In a separate appendix will be found a valuable list of sources for the history of the existing London companies.

The seventieth anniversary of the birthday of Professor Schmoller has been fitly signalized by the publication in two stout volumes of a series of essays on the development of German economics in the nineteenth century, under the title of *Die Entwicklung der deutchen Volkswirtschaftslehre im neunzehnten Jahrhundert* (Leipzig, Duncker and Humblot, 1908; 2 vols. without continuous pagination). As a majority of the German professors of economics today are students of Professor Schmoller, it was not difficult to secure contributors, and we

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find, in the forty separate essays, almost every phase of German thought fitly represented. Naturally in a glorification of this kind we must not take it amiss if the German contributions to the subject are so decidedly overemphasized. It is significant, however, of the trend of Professor Schmoller's influence and of German economic thought in general that the whole subject of distribution is relegated to four minor chapters, each of them written by a contributor wholly unknown outside of Germany. On the other hand, among the valuable contributions are those of Lexis on method, Diehl on value, Inama-Sternegg on land rent, Schumacher on banking, Tönnies on sociology, Waentig on social legislation, Rathgen on free trade, Phillipovitch on socio-political theory and Schanz on public debts. The foreigners who discuss the influence of German teaching on their respective countries are Ashley, Gide, Graziani, Farnam and Fahlbeck (Scandinavia). That Professor Schmoller has well earned this distinction is clear; but amid the symphony of praise we cannot refrain from calling attention to the discordant note which has recently been so vigorously uttered by von Buelow in the *Vierteljahrschrift für Social- und Wirtschaftsgeschichte*. Von Buelow maintains that it is universally conceded that Schmoller is not primarily a theoretical economist. But he goes further and attacks Schmoller as a historical economist, or an economic historian, urging that his contributions to economic history will ultimately be judged by posterity as of no more consequence than his alleged contributions to economic theory.

One more effort to expose the "moral iniquity" of the protective system is made by Raymond L. Bridgeman, in *The Passing of the Tariff* (Boston, Sherman French & Company, 1909; 272 pp.). In Mr. Bridgeman's opinion the tariff is really "passing," and will soon disappear, succumbing to the inevitable tendency toward world unity and world peace. So confident is the author of the speedy approach of his ideal, that he devotes a chapter to considering what system of taxation should be devised to take the place of the tariff. Of course the author assumes that political economy means free trade, and that there is an incompatibility between economic science and the "obstruction theory" of trade. Mr. Bridgeman's doctrine in this respect scarcely squares with that of the secretary of the Free Trade League, who recently ascribed the defection of so many professors from the extreme free-trade position to the fact that they are in the employ of capitalists. The chief point in Mr. Bridgeman's book, however, is the summing-up of the forces which, in the United States at present, are undoubtedly making for a letting-down of the tariff bars. But, like all

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enthusiasts, the author grossly exaggerates the strength of that movement.

Almost like a voice from another age is the *Report of the Proceedings of the International Free Trade Congress*, which was held in London under the auspices of the Cobden Club in August, 1908 (Cobden Club, Caxton House, 1908; 652 pp.). The book is replete with the old arguments and fiery denunciations to which the readers of the Cobden Club publications have long been accustomed. Membership in the congress was, with very few exceptions, recruited entirely from the enthusiastic extremists, and its character can be judged from the names of the American delegates (Messrs. John De Witt Warner, Franklin Pierce, Louis Post and Professor Sumner), France being represented by Yves Guyot, and Germany by the recently deceased Theodor Barth and Professors Brentano, Gothein and Lotz. About the only real contribution to the subject is made in the paper of Professor Brentano, who shows clearly how the protective system has helped the *Kartells* in their policy of "dumping."

In *The Causes of Decay in a British Industry*, by "Artifex" and "Opifex" (New York, Longmans, Green and Company, 1907; 296 pp.), two manufacturers have made an interesting contribution to the history of the fire-arms industry of England. They show by incontrovertible evidence that the industry is gradually receding before the onset of its Belgian, American and German competitors, and they seek to discover the cause and to point out the remedies. Strenuously maintaining that the decline is not due in any way to a diminution in the knowledge or the ability of the English manufacturer, they ascribe the trouble to acts both of commission and of omission on the part of the English government, the chief difficulty being its failure properly to look after the business interests of the country. The gravamen of the complaints of the authors, who differ in minor points, is that the country is not governed on business principles. "A knowledge of business is not engendered by a desultory study of ancient Greek in youth or the cultivation of golf in age" (page 270). Altogether the book gives a unique portrayal of the feeling of unrest which is permeating modern British industry, and throws considerable light on the forces which are making at the present time for protection.

In a little book called *Problems of To-day* (New York, Doubleday, Page and Company, 1908; 201 pp.), Mr. Andrew Carnegie discusses the great problems of wealth, labor and socialism. Mr. Carnegie dedicates his book to Theodore Roosevelt. In it he argues again for the principles for which for some years past he has been known to

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stand. He holds strongly to individualism as opposed to socialism, but he lays great stress on the notion of trusteeship of wealth. He advocates high inheritance taxes and believes that the solution of the labor problem is to be found in labor co-partnership. He adds incidentally a chapter on "My Experience with Railway Rates and Rebates," which shows that he felt the criticism that was sometimes leveled against him for his earlier dealings with the railroads.

Ray Stannard Baker's *Following the Color Line* (New York, Doubleday, Page and Company, 1909; xii, 314 pp.), is a series of interesting impressionist sketches of the many aspects of the negro question in the North and in the South. The author does not attack any elusive ethnological or statistical problems, but attempts to get very near to the realities of the subject by seeing conditions with his own eyes, and hearing with his own ears the views and complaints of those who have had practical experience with the colored race. He has, accordingly, interviewed all sorts and conditions of people, and has set down his story in a spirit of fairness, although he has not veiled his sympathy with the negro in the struggle upward. There is not much new in the book, however, and the solution of the problem—the development of industry and education—is as old as the Fifteenth Amendment. Nevertheless, the book is full of intense human interest, and it ought to take high rank among the "documents" on the negro question.

America has always enjoyed the reputation of being the great testing-ground for communistic experiments. A distinct literature has grown up in connection with the various communistic societies which at one time or another flourished here. It is probably safe to say, however, that none of the communities has been described as fully and as sympathetically as has Amana, by Miss Bertha M. Shambaugh. In *Amana, The Community of True Inspiration* (Iowa City, State Historical Society, 1908; 414 pp.), Miss Shambaugh gives a brief history of the community, a full description of its customs, practices *etc.*, and a most interesting account of the peculiar religious tenets upon which the community life is primarily based. Miss Shambaugh has studied the community at close range for a considerable period of years, and her description while careful and seemingly accurate is broadly sympathetic.

John Rae has brought out a fourth edition of his *Contemporary Socialism* (London, Swan Sonnenschein and Company, 1908; xii, 566 pp.). The new addition carries the account to the beginning of 1908 and is of the same high merit as the earlier editions.

Dr. Peter T. Dondlinger's *Book of Wheat* (New York, the Orange

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Judd Company, 1908; xi, 369 pp.), represents a painstaking effort to assemble all the facts, technical and economic, needful for an understanding of the wheat industry as a whole. The author deals mainly with American conditions, but frequent comparison with the wheat industry of other countries enables the reader to assign its due importance to the American part of the industry. The book is very rich in material of importance to the student of general economics, and its appearance should do much to reform the agricultural views of the text-book writers, which are largely based upon the facts of a bygone epoch. Discussions of diminishing returns and of the relation of population to subsistence will be much improved by a study of the facts of progress in this industry. The book is decidedly interesting, and should appeal to the general reader as well as to the economist. The author has worked in so many facts that at times his exposition appears to be somewhat loosely organized; but in general his style is exactly what such a work demands. His statements of fact may be assumed to be accurate, if we except some of the historical lore which appears to rest upon rather doubtful authority. For instance, one is somewhat inclined to doubt that "about the time of Christ the Normans made England so productive of 'corn' (wheat) that a large amount of grain was exported, and England was known as the granary of the North" (page 315).

Professor J. Russell Smith of the Wharton School has written a most interesting book called *The Story of Iron and Steel* (New York, D. Appleton and Company, 1908; xi, 193 pp.) which is one of a series of "stories" dealing with great industries in America. The book deals not only with the fundamental geological considerations but also with the history of iron and steel making, the development of the industry in America, the rivalry between England and America in the manufacture of steel, and finally, with the organization and methods of the great companies whose histories really constitute the history of steel making in latter-day America. Throughout the book there are numerous illustrations of machinery *etc.*, and these add much to its interest. It is written in a popular style but the necessary technical details are not wanting. It leaves one impressed with the massive proportions of the iron and steel industry today.

Number VI of the *Revenue Series*, published by Whitehead Bros., in Wolverhampton, England, is a work by J. Scarisbrick, entitled *Beer Taxation, Colonial and Foreign* (1908, 251 pp.). The author is an officer in the Internal Revenue service in England, and has succeeded in putting together what is the most complete statement of the history

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and present condition of the taxation of beer that is available. The book is distinctly well done.

Very disappointing, albeit finely printed and well illustrated, is the work by Henry Atton and Henry Hurst Holland, on the *King's Customs, An Account of the Maritime Revenue and Contraband Traffic in England, Scotland and Ireland, from the Earliest Times to the year 1800* (London and New York, E. P. Dutton and Company, 1908; 489 pp.). The authors have had access to many of the original records of the customs service, but in their attempt to compile a popular history, do not seem to have known exactly how to make good use of the records. The book contains indeed a smoothly written, but very miscellaneous, assortment of all kinds of odds and ends about the customs; but in almost no case is the information either exact or complete. To serious students it will be of little use, however interesting it may be to the general reader.

In 1898, Alexander Dana Noyes published his *Thirty Years of American Finance*. It won instant and distinguished recognition. In *Forty Years of American Finance* (New York, G. P. Putnam's Sons, 1909; ix, 418 pp.) Mr. Noyes brings the older book down to date. The new work measures up to the high standard of the earlier one and will likewise be indispensable to the student of American finance.

A few years ago, largely due to the influence of the Italian Secretary of the Treasury, Luzzati, a fund was allotted for the investigation of the financial history of the various states of the kingdom of Piedmont in the eighteenth century, as preliminary to the unification of Italy. The matter was referred to a committee, and by them turned over to Drs. Einaudi and Prato, who have now published the first instalment of their researches in three portly volumes. Professor Luigi Einaudi is responsible for two of these, the first being the initial volume of the first series of historical documents, entitled *La Finanza sabauda all' aprirsi del secolo XVIII, e durante la guerra di successione spagnuola* (Torino, Soc. Tipografico-Editrice Nationale, 1908; 455 pp.). The other volume is a treatise on government economy during the war of the Spanish Succession, under the title of *Le Entrate pubbliche dello stato sabaudo nei bilanci e nei conti dei tesorieri durante la guerra di successione spagnuola* (Torino, G. B. Paravia, E. C., 1907; 358 pp.). Finally, Dr. Guiseppe Prato takes up the financial aspect of the war under the title of *Il Costo della guerra di successione spagnuola e le spese pubbliche in Piemonte dal 1700 al 1713* (Torino, Fratelli Bocca, 1907; 410 pp.). All three volumes are carefully done, and the work when

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completed bids fair to stand unequaled among existing histories of public revenue and expenditures.

It was a happy thought of Stanley Horsfall Turner, lecturer in Political Economy at the University of Aberdeen, to do for his country what Mr. Cannan has so well done for England, and the result is a scholarly, interesting and valuable work, entitled *The History of Local Taxation in Scotland* (Edinburgh, Blackwoods, 1908; 312 pp.). To sketch the history of Scotch taxation was far more difficult because of the lack of centralization in Scotland, and because of the persistence of varying types of taxation. To the historical student Mr. Turner's book is extremely welcome, for it not only illustrates the general truths which have recently been elaborated by various works, but also shows how many of the old forms still linger in remote districts. Thus, to mention only a few instances, we find a very instructive account of the struggle between the principles of ability and of benefit, of the original acceptance of the general property tax, and of its gradual disappearance, even though the tax on means or on substance as contained in the stent roll, is still found in a few places. Among the other curious survivals are the progressive rentals tax, the local *octroi* duties, known as the Petty Customs, and the tax on capital value rather than on rental value. A clear account is also given of the development of the system of division of rates between owner and occupier, which is now being pictured as an ideal in England. Altogether the book contains a multitude of interesting and enlightening facts, which carry their own lesson for American readers.

The first of the publications of the Minnesota Academy of Social Science is entitled *The Papers and Proceedings of the First Annual Meeting* (1908, 197 pp.). The proceedings are edited by Mr. F. L. McVey, at that time president of the Minnesota Tax Commission, and now president of the University of North Dakota. The whole session was devoted to the subject of taxation, and the proceedings contain a series of interesting discussions on the valuation of real estate, on the assessment of railroads and on the taxation of money and credits. The volume forms a decidedly valuable contribution to the general topic.

The *Verein für Social-Politik* has begun the publication of a series of volumes on local finance, under the title of *Gemeindefinanzen*. The first instalment deals with the system of local taxation in the more important German states and is entitled: *System der Gemeindebesteuerung in Hessen, Würtemberg, Baden, Elsasz-Lothringen, Bayern, Sachsen, Preuszen* (Leipzig, Duncker and Humblot, 1908;

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318 pp.). Together with the recent Imperial Government publication on the German tax system, it affords the most comprehensive survey and authoritative exposition of present fiscal conditions in Germany.

C. B. Fillebrown, the president of the Massachusetts Single Tax League, has collected a number of papers, and issued them, with some revision, under the title of *The A, B, C of Taxation* (New York, Doubleday, Page and Company, 1909; 229 pp.). Mr. Fillebrown is known as one of the most reasonable of the Single Taxers, who has been successful in impressing public opinion by reason of his very temperateness. We find in the book not only the usual arguments of the school, but more especially emphasis laid upon the theory that under existing American conditions the selling value of land is an untaxed value, owing to the working-out of the principle of capitalization. Part II is entitled "Three Boston Object Lessons in Taxation," and contains a series of interesting facts. Part III is composed of minor essays and addresses, all of which emphasize the same point.

Amid the flood of literature called out by the still continuing discussion of tax reform in France, are Gauthier's *La Réforme fiscale par l'impôt sur le revenu* (Paris, Alcan, 1908; 340 pp.); and Milhaud's *L'Imposition de la rente—Les Intérêts du credit public, les engagements de l'état, l'égalité devant l'impôt* (Paris, Felix Alcan, 1908; 257 pp.). Senator Gauthier, formerly Minister of State, shows the necessity of a general tax reform, and goes more especially into the question of the administrative possibilities of the proposed income tax. On the whole, he is a partisan of the lump-sum income tax, and thinks that it can be brought into a close relation with the existing inheritance tax. Professor Milhaud takes up primarily the subject of the taxation of government securities, and claims that a separate taxation of government bonds will be a fatal blow at France's credit and prosperity. He also thinks that the problem can be solved by a general tax on individual incomes, which would thus include the income of the bond holder as well. Both works are clearly written and disclose the tendency of the times.

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